SUPREME COURT, U. S.

JAN 29 1968

DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1061

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, et al.,

Petitioners

vs.

GEORGE R. WILLIAMS, et al.,

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RICHARD ERNST
P.O. Box 7861, Rincon Annex
635 Sacramento Street
San Francisco, California 94111

Attorney for petitioner Pacific Maritime Association

NORMAN LEONARD
1182 Market Street
San Francisco, California 94102

Attorney for International Longshoremen's and Warehousemen's Union and other union petitioners

Of counsel:
MARY C. FISHER
DENNIS T. DANIELS
635 Sacramento Street
San Francisco, California 94111

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	3
Reasons for Granting the Writ	13
Conclusion	20

TABLE OF AUTHORITIES CITED

Cases	Pages
Chicago Federation of Musicians, [Shield Radio & T.V. Productions, Inc.], 153 NLRB 68 (1965)	10
Drivers Union v. Riss & Co., 372 U.S. 517 (1963)	18
Ford Motor Co. v. Huffman, 345 U.S. 330 (1953)	13
Humphrey v. Moore, 375 U.S. 335 (1964)	17, 18, 19
International Longshoremen's and Warehousemen's Union [American Mail Line], 144 NLRB 1432 (1963)	15
Pacific Maritime Association and International Longshoremen's and Warehousemen's Union, Local 10 [Johnson Lee], 155 NLRB 1231, 60 LRRM 1483 (1965)	10
Steele v. Louisville & Nashville R.R. Co., 323 U.S. 192 (1944)	13
Vaca v. Sipes, 386 U.S. 171 (1967)	14, 15, 16, 19
Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission, 371 F.2d 747 (C.A.D.C. 1966)	15
Woody v. Sterling Aluminum Products, Inc., 365 F.2d 448 (8 Cir. 1966)	17
Woody v. Sterling Aluminum Products, Inc., cert. den., 386 U.S. 957	17
Woody v. Sterling Aluminum Products, Inc., reh. den., 386 U.S. 1027	17

Statutes	
Labor Management Relations Act, § 301 (29 U.S.C. 185)	3, 12, 17
National Labor Relations Act, § 10 (29 U.S.C. 160)	3, 10

In the Supreme Court of the United States

OCTOBER TERM, 1967

No.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, et al.,

Petitioners

vs.

GEORGE R. WILLIAMS, et al.,

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petitioners Pacific Maritime Association and International Longshoremen's and Warehousemen's Union and all other defendants in the above-entitled matter, pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Ninth Circuit entered on August 28, 1967, which was explained by the Court's memorandum of October 30, 1967 denying the petitions for rehearing. The Ninth Circuit's decision reversed the District Court's orders dismissing respondents' fourth amended complaint and granting summary judgment in favor of petitioners.

OPINIONS BELOW

The opinion and orders of the United States District Court for the Northern District of California (R. 501) dismissing respondents' original, first amended, second amended and third amended complaints are unreported.[1] They appear in the Appendix at pages 1-8. The District Court's order dismissing respondents' fourth amended complaint and granting summary judgment in favor of petitioners is also unreported. It appears in the Appendix at page 9. The opinion of the Court of Appeals (Doc. 3) is reported at 384 F.2d 935 (1967) and appears in the Appendix at pages 11-25. The judgment of that court (Doc. 4) appears in the Appendix at page 26. The opinion and order of the Court of Appeals denying petitioners' petition for rehearing (Docs. 7, 8) appear in the Appendix at pages 27-29.

JURISDICTION

The opinion and judgment of the Court of Appeals for the Ninth Circuit were filed on August 28, 1967 (Doc. 4). Petitioners' timely applications for rehearing were denied by that court by an opinion and order entered on October 30, 1967 (Docs. 5, 6, 7). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Do members of a collective bargaining unit, who have lost their jobs as a result of the application of a provision of a collective bargaining contract, have a federal court remedy to set aside the contract provision on the

---

1. The following abbreviations are used herein: "R.T." refers to the reporter's transcript in the District Court. "R." refers to the balance record on appeal to the Ninth Circuit. "Doc." refers to other documents in the record certified to this Court. "App." refers to the Appendix to this petition.

ground that its substance is arbitrary, capricious, unreasonable, unfair, or discriminatory?

2. Can the courts create a judicial remedy available to persons covered by the National Labor Relations Act, which duplicates their exclusive statutory remedy under § 10 of that Act, 29 U.S.C. § 160, for breach of the duty of fair representation in the negotiation of an amendment to a collective bargaining agreement?

3. Do the courts have jurisdiction under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, to hear a collateral attack on a final decision in the grievance-arbitration adjudication procedure under the collective bargaining contract where there is no litigable claim that the door to collateral attack was opened by a union breach of its duty of fair representation in that adjudication procedure?

STATUTES INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185, provides:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT

This case involves, on the one hand, a group of men who were formerly employed as longshoremen in San Francisco and, on the other, their employers and their union.

Petitioner Pacific Maritime Association (PMA) is the collective bargaining representative of employers of long-

shoremen in the San Francisco Bay Area and elsewhere on the Pacific Coast (R. 1). Petitioner International Longshoremen's and Warehousemen's Union (ILWU) is the exclusive collective bargaining representative of the longshoremen (R. 1, 109, 110). Petitioner Local 10 is a chartered local union affiliate of the ILWU limiting its membership and activities to the San Francisco area (R. 110). The individually named petitioners are described in the complaint as "officers or executive officials of the defendant labor organizations" (R. 120, ¶52).

Respondents at one time were limited registration (Class B) longshoremen on the San Francisco waterfront. Prior to starting this case, each respondent applied to advance from this probationary seniority status to full registration (Class A) status. His application was denied because he failed to meet the established standards to advance in seniority status as a longshoreman. This action, in turn, gave rise to the termination of his registration status. He then stood discharged ("deregistered").

Respondents claim they should be returned to employment as registered longshoremen under the ILWU-PMA collective bargaining contract, with the seniority they had prior to their discharges in 1963. Respondents attack provisions of the contract, particularly the amendments that were the specific basis of their deregistrations in 1963. They also attack the final decision on their grievances in the contractual adjudication process, which sustained their deregistrations.

The ILWU-PMA collective bargaining history, which has continued since 1934, has produced a contract that is complex. It covers all ports in California, Oregon and Washington. The basic contract document (R. 4) is supplemented by local rules and agreements, as well as supplemental documents of coastwide application, filling in the interstices in the basic document.

The contract also reflects the unique nature of the longshore employment. It is not characteristic of the longshoreman's job that he reports to a regular work place or even to a number of places designated by a single employer. Rather, he reports to a dispatching hall and is dispatched from there to work assignments for any one of the many employers who are represented by PMA for collective bargaining purposes. Accordingly, the longshoreman's registration status at the dispatching hall establishes his seniority rights.

Three basic seniority classifications are now used in the administration of the ILWU-PMA contract. The core of longshore labor consists of the fully registered (Class A) longshoremen. To supplement this work force, there are the probationary or limited registration (Class B) longshoremen. Provisions exist for advancing men from the probationary group to full (Class A) registration from time to time as needed. A third category of "casual employes" also exists; it includes the longshoremen on neither registered list. These three basic seniority classifications have led to three corresponding gradations in the other consequences of seniority, including steadiness of employment, amount and regularity of earnings, security against lay-off, likelihood of discharge, selection of work classifications, promotion, guarantees, vacations, welfare, pensions, and other fringe benefits.

The contract also provides that the Joint Port Committee in each port shall operate the local dispatching hall and shall have control over the registration lists, subject to the ultimate control of a single Joint Coast Committee, with the power to make additions or subtractions (R. 4, page 44). In 1959 the San Francisco committee took applications from a large number of men seeking registration as Class B probationary longshoremen and selected 742 men from the 9,606

applicants. Respondents were among that group (R. 754). During the next four year period the registration list was frozen while the parties were negotiating in detail over the industry's problem of needing automation of operations and the employes' problem of needing assurances of continued employment while operations were so modernized. By the spring of 1963, the original 742 B men had been reduced to 564 by attrition.

In 1963 all of the Class B men were given the opportunity to file applications for Class A seniority status (R. 755). All men then on the Class B registration list, including respondents, submitted applications. In the applications filed at this time, as in the documents that respondents filed in 1958, there is express notice to each man of the power of the local committee to adopt rules affecting his registration, and he specifically agreed that his employment was subject to these rules. He further agreed that any complaints he had regarding his application would be "handled under the grievance procedure set forth in the contract" (R. 766; see also R. 4k).

The basic collective bargaining document includes rules setting forth penalties, including deregistration, for contract infractions by the fully registered men. In regard to the Class B (limited registration) men, § 17.851 of the contract provides:

> "... [M]ore stringent rules and penalties applicable to limited registered men ... that are provided in existing and future local ... rules and procedures or by mutually agreed practices shall be applicable." (R. 4, page 79)

To supplement this provision, a set of rules for Class B longshoremen (R. 192-194) was distributed to the respondents when they were registered. These rules declared several types of conduct to be wrongful and specified penalties, in some circumstances immediate deregistration, that could be

imposed while the men remained in Class B seniority status. In addition, the 1958 registration and deregistration rules (R. 123-129) permitted deregistration of any Class B longshoreman for *any* cause (R. 127, item xi). The subsequent 1963 rules, here attacked by respondents, narrowed the meaning of "*any* cause" by limiting it to situations where there had been prescribed quantities of certain of the types of conduct that had been declared to be wrongful in the Class B rules (R. 192-194). These 1963 rules, which were adopted to govern the committee's judgments as to the men's overall employment histories while in Class B seniority status in reviewing their applications to advance to fully registered (Class A) status, called for the deregistration of those whose records disclosed such cause (R. 756, 89)—such "cause" including absenteeism, cheating in reporting hours so as to gain advantages in the distribution of work through the dispatching hall, repeated lateness in paying their bills for dispatching hall costs, insubordination, intoxication, etc.—and for the advancement to Class A seniority status of those whose Class B employment history was satisfactory under these rules.

The Joint Port Committee accordingly reviewed the records it had as to the longshore work history of each applicant against the standards for these histories set forth in the 1963 rules. The Class B men who initially appeared to have given cause for deregistration were given notice thereof and an opportunity to appear before the Joint Port Committee. Each respondent appearing was told of the matters at issue and was permitted to reply (R. 757-758). After further consideration of the men's records, when errors in the original view of the facts were brought to light and corrected, the Committee reached its final determination as to who should be advanced to Class A registration and who should be deregistered. At this time 467 of the

Class B men who had applied for fully registered Class A status in 1963 were advanced to Class A. The Committee concluded that the remaining 97 should be reregistered. Respondents are 51 of these 97 men (R. 757).

Each of the respondents took his deregistration into the adjudication procedures provided by the grievance-arbitration machinery of the contract. The notice of his deregistration included detailed information as to how and when to do this. In accordance with this information, each respondent filed a timely grievance on a form prepared by respondents, which asserted:

> "Your committee de-registered me on June 17. On July 24, I received your letter denying my hearing appeal. In so doing you consummated an action that is discriminatory. You have not judged all the men involved by the same standards.
>
> "I appeal your decision and request another hearing as stipulated, where I will prove and document this discrimination." (R. 2, 4L).

The Joint Port Committee heard the grievances and entered a decision adverse to respondents. They then appealed their grievances to the Joint Coast Committee.

The Decision of the Joint Coast Committee, issued December 18, 1964, was also adverse to respondents. This committee found that the rules as to advance in registration status and as to deregistration had been applied fairly and uniformly, that each respondent failed to meet these standards, and that each was properly deregistered (R. 86-91).[2]

---

2. The Joint Coast Committee sustained the discharges under the 1963 rules on the basis of findings that each had given cause for deregistration under these rules (R. 90). This action was based on evidence that 35 respondents violated the low-man-out rules in the course of which they dishonestly left some 603 hours out of reports they submitted in getting dispatched to work, that 44 of them were late at least 365 times in making the payments

On these findings it concluded there had been no discrimination. Respondents' attorney was served with the decision the day it was rendered (R. 83). The Joint Coast Committee simultaneously gave notice (R. 84-85) to each respondent of his right to appeal to the Coast Arbitrator for a review by him of the facts of deregistration (R. 4, page 69). No appeal was filed (R. 83). Instead, the Joint Coast Committee's decision has been the subject of this collateral attack in the courts.

While the grievance-arbitration adjudication process was being carried on, the jurisdiction of the National Labor Relations Board was invoked by other deregistered men. Five Class B men who had been deregistered at the same time as respondents filed unfair labor practice charges against petitioners in mid-1963 (R. 231). The charges were timely; a complaint was issued. After lengthy hearings, a decision was rendered by the trial examiner on May 4, 1965 (R. 231-263). He found there had been a breach of the duty of fair representation, action based on arbitrary, irrelevant and invidious considerations, and unlawful discrimination (R. 255).

Some two weeks later most of respondents filed unfair labor practice charges against petitioners (R. 176-179). Their charges, like their complaint in court, attacked their deregistration. These stated, in part:

> "The actions taken by PACIFIC MARITIME ASSOCIATION and the International Union and Local No. 10, were taken without cause, without prior notice of the cause or reason for said actions, and were the results of discrimination and treatment based upon irrel-

---

required of them under the collective bargaining contract for the support of the dispatch hall, that there were five suspensions for intoxication, four suspensions for refusing to work as directed, three suspensions for walking off the job, six reprimands for refusing to work as directed, and 11 probations for poor work availability (R. 91q-91t).

> evant, invidious and unfair considerations. In addition, said actions were taken against the charging parties because of their nonmembership in the aforementioned union, and resulted in interfering, restraining and coercing them from exercising their rights guaranteed by Section 7 of the Act." (R. 179)

The charges were referred to an examiner for investigation (R. 177, 178b). On June 21, 1965 the Regional Director of the Labor Board informed the charging respondents (R. 176a, 180b) that their charges of "acts which arguably constitute unfair labor practices" could not be litigated before the Board because they had been filed after the expiration of the applicable six-months period of limitations specified in § 10(b) of the Act, 29 U.S.C. § 160(b).

Meanwhile an appeal had been taken to the Labor Board from the trial examiner's decision with respect to the five timely charges. On November 29, 1965, the Board reversed the trial examiner's findings and conclusions. It held that the discharges involved neither a breach of the duty of fair representation nor discrimination nor any other activity prohibited by the Act. The Board found the facts to be that the deregistrations were based on legitimate lawful standards, "the 1963 Rules", and that they were adopted in good faith in the collective bargaining process with the purpose of selecting the best longshoremen for full registration status. *Pacific Maritime Association and International Longshoremen's and Warehousemen's Union, Local 10* [*Johnson Lee*], 155 NLRB 1231, 60 LRRM 1483 (1965).[3]

---

3. The Board, 155 NLRB at 1234, referred to *Chicago Federation of Musicians* [*Shield Radio & T.V. Productions, Inc.*], 153 NLRB 68 (1965) and stated: "In the instant proceeding, the 'true purpose or real motivation' of the Respondent Union was meeting the industry's increasing needs for a greater number of steady, highly qualified, and responsible longshoremen by affording fully registered status to the most qualified of the limited registered longshoremen and abolishing the Class B list."

At this time respondents were in court attacking these same rules and the decision of the Joint Coast Committee (R. 86-91) applying them. That decision, respondents and the Court of Appeals (App. 23) and petitioners agree, is "final according to the contract". Two substantive claims made by respondents were considered in the opinions below.

The first claim is that the union violated its duty of fair representation in negotiating the 1963 registration rules. The opinion denying the petition for rehearing recognizes that pleading and proof of "hostile or invidious" discrimination is necessary to establish such a claim (App. 28). The facts allegedly underlying this claim of discrimination, like the claim that the contract was violated, remain obscure.

Petitioners and the district court believed they understood this claim. In view of the failure to spell out anything different in the five forms of complaint respondents filed with the district court, or in the supplementary affidavit and statements of their attorneys, petitioners assumed that this claim asserted violation of the contract's § 13, which reads:

> "There shall be no discrimination in connection with any action subject to the terms of this Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin or religious or political beliefs."

Respondents have judicially admitted this type of discrimination is not involved. Thus the opinion of the Court of Appeals states (App. 21), "[Respondents] say that § 13.1 has nothing to do with their complaint. They contend . . . in short, that they were fired as Class B longshoremen."

The October opinion below sets out the allegations that it finds sufficient to state a claim of "hostile or invidious" discrimination (App. 28). These state that the new rules were arbitrary, were not reasonably relevant in determining

which Class B longshoremen should be advanced to Class A, were irrelevant and capricious in determining who should be deregistered, and were arbitrary and unfair.[4]

The second claim, discussed in the latter portion of the opinion of the Court of Appeals (App. 21-24), relates to the deregistration of respondents by the "final decision made by the Joint Coast Labor Relations Committee" (R. 118, ¶ 42, incorporating ¶ 24). Respondents allege that this decision was in violation of "the clear terms of the collective agreement" (R. 119; ¶ 46) and in violation of respondents' "individual rights" under the collective bargaining agreement (R. 119; ¶ 147). The Court of Appeals concluded that the decision of the Joint Coast Committee, that there was no contract violation, is subject to collateral attack in the courts although the opinion in no way disagrees with the contention of petitioners that there is no claim of "hostile or invidious" discrimination in the adjudication procedure leading to the final grievance decision under attack.

The August, 1967, order of the Court of Appeals for the Ninth Circuit set aside the summary judgment in favor of petitioners and remanded the matters raised by the fourth amended complaint for further proceedings in the trial court.[5] After timely petitions for rehearing, a supplemen-

---

4. Respondents also alleged that the rules were applied discriminatorily against them. This generalization is explained by statements in an affidavit. These assert that these rules, which were adopted to govern the selection of men to advance from Class B status to Class A status, did not apply to the longshoremen who had previously achieved Class A seniority status (R. 343-345).

5. Respondents' fourth amended complaint, like its four predecessors, claims federal jurisdiction under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, on the basis of allegations of violation of the collective bargaining contract. It seeks declaratory relief, money damages for back pay for each of the 51 respondents and a variety of injunctive relief of the sort from time to time obtained through proceedings before the Labor Board (R. 121-122).

tary opinion explaining its decision was filed. Thereupon an order was entered denying rehearing on October 30, 1967.

REASONS FOR GRANTING THE WRIT

The judgment of the Court of Appeals would require the federal courts to hear every claim that a collective bargaining provision is unfair, arbitrary, capricious, irrelevant or discriminatory.

The opinion below would put the courts into the business of passing judgment on the substance of collective bargaining agreements. No decision of this Court has ever gone this far. It has recognized this is not a judicial function.

The duty of fair representation requires the bargaining representative to make "an honest effort to serve the interests of all [in the collective bargaining unit] without hostility to any". *Ford Motor Co. v. Huffman*, 345 U.S. 330 at 337. The representative of a unit of employes has "the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them". *Steele v. Louisville & N.R.R.*, 323 U.S. 192 at 203. The *Steele* opinion continues by recognizing that the union must necessarily at times enter into contract provisions that have unfavorable effects on some of the employes within the bargaining unit and that all of the members in the bargaining unit "are not identical in their interest or in their merit". The *Ford* opinion recognizes that differences inevitably arise in collective bargaining as to the manner and degree in which collective bargaining provisions affect individuals within the bargaining unit. The opinion recognizes that complete satisfaction of all persons within the unit is "hardly to be expected" and that the test is whether the bargaining representative has acted in "com-

plete good faith and honesty of purpose in the exercise of its discretion".[6] 345 U.S. 330 at 338.

The Ninth Circuit makes the same error as the Missouri Supreme Court made in the judgment reversed by this court in *Vaca v. Sipes,* 386 U.S. 171 (1967). In that case this Court overturned a holding that a jury verdict that an underlying grievance was meritorious established that the union committed a breach of the duty of fair representation in deciding not to appeal the grievance. Here, the Court of Appeals has directed the lower court to consider the respondents' complaint in light of its statement that "hostile or invidious" discrimination, and hence a breach of the duty of fair representation, can be shown merely by proving that the collective bargaining provision negotiated is arbitrary, capricious, irrelevant to the subject matter of the bargaining, unfair or discriminatory (App. 28). The footnote to the opinion denying rehearing (App. 28) illuminates the rationale of the court below. It concludes that *Vaca* supports its holding because the adjectives used in the pleadings to describe the substantive character of the collective bargaining provision here attacked are the same as those used in the *Vaca* opinion in describing the conduct of the union in carrying on its collective bargaining function.

A breach of the duty of fair representation cannot be established because a judge or jury concludes that he or they would have negotiated a different collective bargaining provision. One that might be more desirable from the point of view of the litigants in court, in the eyes of the jury, would be entirely unacceptable to the great body of employes in the collective bargaining unit. Thus, a "humanitarian" clause guaranteeing continued employment to un-

6. The Labor Board applies the same test generally and did so with respect to the rules here under attack. See footnote 3 supra.

satisfactory workers could militate against the possibility of gaining a substantial wage increase for the entire bargaining unit based upon the productivity of their labor. In the present case, such a question would be directly presented to the court hearing this matter on remand, for respondents found themselves to be a minority within the collective bargaining unit because they opposed the introduction of automated or mechanized equipment on the ground it would make their jobs harder although, in exchange, the employers added $29,000,000 to the total wage package of the entire bargaining unit (R. 339).[7]

The most serious vice in the decision of the court below, which cries out for immediate review of this matter in this Court, is the open invitation it provides to all groups and individuals within all collective bargaining units to move into the federal courts to try their claims that their exclusive collective bargaining representative is negotiating unsatisfactory contract provisions. The opinion below states it is necessary only that some one assert the provisions are arbitrary, capricious, unfair, irrelevant or discriminatory. Just as its *Vaca* opinion reverses the proposition that a jury verdict that a grievance is meritorious will not open the door to a court order sustaining the grievance in the absence of proof of a breach of the duty of fair representation, this Court must close the door to similar judicial review of the substance of collective bargaining contracts.

---

7. The Labor Board has stated, "The automation concord . . . has been widely acclaimed as a history-making precedent, a peaceful settlement of a problem which has troubled the West Coast waterfront for a number of years." *International Longshoremen's and Warehousemen's Union* [*American Mail Line*], 144 NLRB 1432 at 1442 (1963). *Cf. Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission*, 371 F.2d 747, 749 (C.A.D.C. 1966).

The difficulties of resolving matters through collective bargaining are already staggering. The solution of collective bargaining problems requires delicate and skillful negotiations. The collective bargaining process cannot continue to perform its vital function in our economy if the courts are available to consider the claims of the almost always present minority that the agreement achieved was unsatisfactory to them.

For the due and proper administration of the courts, it is also imperative that this Court promptly rule there is no door open to this type of litigation. The courts do not have the expertise to make value judgments on the merits of provisions in collective bargaining contracts. Furthermore, there are not enough courts to hear and determine the claims of those who are sure they could negotiate a contract more advantageous to their individual interests than the one negotiated by their union spokesman.

There is no exception to the Labor Board preemption doctrine to permit a judicial remedy for a union's breach of its duty of fair representation in the negotiation of a collective bargaining contract provision.

The Court of Appeals erroneously reads *Vaca v. Sipes*, 386 U.S. 171, in asserting that it gives a judicial remedy to those who claim that their union has breached its duty of fair representation in negotiating a collective bargaining provision that they do not like. Its opinion fails to recognize the difference between a breach of this duty in negotiating a contract and a breach of this duty that is directly involved in the litigation of a claim that there has been a violation of the collective bargaining agreement. Fundamental to the decision in *Vaca* is the proposition that the

employer should not be able to escape the consequences of its violation of the collective bargaining agreement because the union acts in breach of its duty of fair representation by failing to carry the grievance involved to the arbitrator. Fundamental to the decision in *Humphrey v. Moore*, 375 U.S. 335, is the principle that the employer cannot escape the consequences of its violation of the collective bargaining contract if the union has concurred in that violation by action it has taken in the adjudication of the grievance that is in breach of this duty. In both cases this Court recognized that the determination of the issues of the duty of fair representation was directly involved in a contract violation issue, an issue that is clearly within the jurisdiction of the courts and is beyond the jurisdiction of the Labor Board.

This distinction was clearly perceived by the Eighth Circuit in *Woody v. Sterling Aluminum Products, Inc.*, 365 F.2d 448 (8 Cir. 1966), cert. den. 386 U.S. 957, reh. den. 386 U.S. 1027. The Eighth Circuit held that a claim that the union negotiated its collective bargaining contract in bad faith to the plaintiffs' detriment and failed to represent the plaintiffs fairly and honestly in the negotiations did not set forth a claim within the jurisdiction of the federal courts but one within the exclusive jurisdiction of the Labor Board. The decision of the Eighth Circuit is thus in direct conflict with the decision in this case in the Ninth Circuit. On this ground the Court should grant certiorari to resolve this conflict. We submit that the Eighth Circuit is correct in its decision, for the exception relied upon stems from § 301 of the Labor Relations Management Act and so the court's jurisdiction must grow out of a claim of contract violation.

The decision below is in conflict with applicable decisions of this Court that the courts are open for a collateral attack on a final decision in the grievance procedure of a collective bargaining contract only where there has been a breach of the duty of fair representation in the grievance adjudication process.

The latter portion of the principal opinion of the Court of Appeals (App. 21-24) deals with the claim that the Joint Coast Committee's decision is in breach of the collective bargaining agreement. The opinion recognizes that this decision is "final according to the contract" (App. 23). It makes no suggestion that there is a litigable claim that there was any breach of the duty of fair representation in the conduct of the adjudication machinery under the contract, or anywhere after the grievances were filed in July 1963. Nevertheless, it holds this claim should be further considered in the trial court.

The opinions of this Court hold that decisions in grievance procedures that are final and binding under the terms of the contract are not open to collateral attack unless there is a litigable claim of breach of duty of fair representation or fraud in the conduct of the grievance machinery. In *Drivers Union v. Riss & Co.*, 372 U.S. 517, this Court held that grievance decisions final under the contract are final in court. An exception to the general rule was recognized in *Humphrey v. Moore*, 375 U.S. 335, where this Court held that such a decision in the grievance machinery would be open to judicial review in order to enforce a collective bargaining contract where a breach of the duty of fair representation in its handling of the grievance "would effectively undermine the decision of the Joint Committee as a valid basis for [the] discharge". 375 U.S. at 343. The holding of the case, however, is that the grievance decision

of the Joint Committee is "final and binding upon the parties, just as the contract says it is" because there was no fraud or breach of duty by the exclusive bargaining agent in the adjudication of the grievance. 375 U.S. at 351.

This Court recognizes the same exception and comes to the same conclusion for the same reason in *Vaca v. Sipes*, 386 U.S. 171. Again, the claim was made that a grievance decision that became final, here because of failure to carry it to the arbitrator, was binding upon the employe who had gone into court. This Court recognized that this defense would not be valid if the union's failure to appeal it to the arbitrator was an act in breach of the duty of fair representation. The Court stated that the litigant in court had to prove "arbitratory or bad faith conduct on the part of the Union in processing his grievance" to enable him to reverse the grievance decision that became final under the terms of the collective bargaining contract when the time to appeal to the arbitrator had expired. 386 U.S. 171 at 193. It sustained the defense because this proof was absent.

This Court should promptly take action to clarify the law in this important area. At the heart of a satisfactory collective bargaining process is a smoothly working grievance-arbitration procedure. The vitality of that procedure is critical to the vitality of the entire collective bargaining process as a means for maintaining industrial peace. The finality of decision in this process is of major importance if the economy of the country is to carry on without disturbance. The invitation of the opinion below to continuing litigation of points that should be finally resolved through the processes agreed upon between the union and the employer, by bringing to court the merits of decisions interpreting and applying the collective bargaining contract, cannot remain open. Employers and unions must be promptly reassured that the merits of grievance decisions reached in good faith will not be re-examined in court.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

January 25, 1968

Respectfully submitted,

RICHARD ERNST

Attorney for petitioner Pacific Maritime Association

NORMAN LEONARD

Attorney for International Longshoremen's and Warehousemen's Union and other union petitioners

Of counsel:

MARY C. FISHER
DENNIS T. DANIELS

(Appendix Follows)

Appendix

In the United States District Court for the Northern District of California, Southern Division

GEORGE R. WILLIAMS, et al., *Plaintiffs,* vs. PACIFIC MARITIME ASSOCIATION, et al., *Defendants.*	No. 42284

ORDER

Good cause appearing therefor, upon the certificate and application of SIDNEY GORDON, ESQ.,

IT IS HEREBY ORDERED, that hearing of Motions of Defendants, now set for July 21, 1964, be, and the same are taken off calendar, and

IT IS FURTHER ORDERED, that plaintiffs be, and they are hereby granted leave to file an Amended Complaint within twenty-one (21) days subsequent to July 21, 1964, and

IT IS FURTHER ORDERED, that defendants have leave to file answer, motions, or other responsive pleadings within twenty-one (21) days subsequent to the filing by plaintiffs of Amended Complaint.

Dated July 21, 1964.

/s/ ALBERT C. WOLLENBERG
Judge

In the United States District Court for the Northern District of California, Southern Division

GEORGE R. WILLIAMS, et al., *Plaintiffs,* vs. PACIFIC MARITIME ASSOCIATION, a non-profit corporation; INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, et al., *Defendants.*	No. 42284

This matter having been argued, briefed and submitted for ruling,

IT IS ORDERED that defendants' motion to strike the amended complaint be GRANTED. The amended complaint is hereby stricken. Plaintiffs shall have leave to file a second amended complaint on or before November 4, 1964. In view of this order, the other motions of defendants herein are premature and plaintiffs' motion for an injunction may be renewed at a later date on appropriate notice as required by the applicable rules.

Dated: October 27, 1964.

/S/ STANLEY A. WEIGEL
United States District Judge

In the United States District Court for the Northern District of California, Southern Division

GEORGE R. WILLIAMS, et al., *Plaintiffs,* vs. PACIFIC MARITIME ASSOCIATION, a non-profit corporation, et al., *Defendants.*	Civil Action No. 42284

MEMORANDUM AND ORDER GRANTING MOTION TO STRIKE

Plaintiffs are fifty-six individuals who have been employed as longshoremen. The defendants are Pacific Maritime Association, International Longshoremen's and Warehousemen's Union, Local 10 of International Longshoremen's and Warehousemen's Union and eleven individuals. The forty-two page complaint and nineteen incorporated pages of "Declarations" of counsel is neither a short nor a plain statement of any claim. The complaint is verbose and largely unintelligible. It appears to talk about and around the idea that unlawful activities of the defendants have somehow limited economic opportunities of the plaintiffs.

The complaint now before the Court represents a third attempt to satisfy the requirements of Rule 8(a) and (e) of the Federal Rules of Civil Procedure. The original complaint was voluntarily amended after Judge Wollenberg of this Court made a suggestion to that effect. The first amended complaint was stricken after full hearing because it failed to meet the standards set by Rule 8(a) and (e) that a pleading should present "a short and plain statement of the claim showing that the pleader is entitled to relief",

and that each averment of the complaint should be "simple, concise, and direct." Once again, with regard to the second amended complaint, the ruling will have to be the same.

For an example of the "style" of the pleading, consider the following, taken literally from pages 17 and 18.

XX

That plaintiffs are entitled to mandatory injunction upon the parties to said collective bargaining agreement that parties be registered by them as longshoremen of the Class "A" category, and that defendant Union officials and defendant Pacific Maritime Association and their Agents be enjoined and restrained from coercion, interference, or discrimination, in any form or manner whatsoever, with the rights of plaintiffs as said longshoremen of the "A" category under said collective bargaining agreement, and Order upon said defendants and their agents which enjoins and restrains them from coercion, interference, or discrimination, in any wise, with other longshoremen of the Class "A" category, including members and the membership of said Local 10, and in its internal affairs, and the rights of said persons under said collective bargaining agreement and the Constitution of said Local 10, as pertains to the relief granted by the Court to plaintiffs, and further Order by the Court which enjoins and restrains said officials and defendant Pacific Maritime Association and the agents of said defendants from any concert toward said coercion, interference, or discrimination, upon plaintiffs or said membership pursuant to the relief granted by the Court, and that said defendants be Ordered to forthwith take all steps under said collective bargaining agreement in accordance with, and in protection of, all rights of plaintiffs as registered longshoremen of the Class "A" category, and forthwith enstate plaintiffs in the rolls thereof.

For another example of that "style", consider this example, also unedited, from page 24.

XIII

That consequent upon the decision of said Coast Committee to accomplish full registration from the list of persons who had been limited registration longshoremen since 1959, and, in said aforealleged concert with defendant Pacific Maritime Association, that the individual defendants sued herein, in light of the aforealleged policy of said Union that full registered longshoremen shall comprise its full members, gained the approval and consent of the full membership of said Local 10 toward the effectation of said policy with respect to said limited registration longshoremen, including plaintiffs, although said consent was in no wise given to said aforealleged illegal purposes and objects of said defendants, and said defendants, within the procedures of said Local 10, which were, and which are, dominated, manipulated and controlled by them, began to process said limited registration longshoremen, including plaintiffs, for full membership, on or about January 15, 1963, in those circumstances which are hereinafter alleged and set forth.

It could be said that the above passages are quoted out of context were it not for the fact that a reading of the entire complaint and "Declarations" fails to reveal just what the context might be.

The complaint is both redundant and ambiguous. Rulings on discovery would be enormously difficult, because defense lawyers could not safely determine issues of relevancy and judges could not safely decide them. Similarly, rulings on motions pursuant to Rule 12 would be exceedingly difficult. The requirements of Rule 8 (a) and (e) are sufficient, without further authority, to strike the complaint. See *Carrigan*

v. California State Legislature, 263 F.2d 560 (9th Cir. 1959), *cert. den.* 359 U.S. 980 (1959); *McCann v. Clark,* 191 F.2d 476 (D.C. Cir. 1951); *Renshaw v. Renshaw,* 153 F.2d 310 (D.C. Cir. 1946); *Cranney v. Trustees of Boston University,* 139 F.Supp. 130 (D.Mass. 1956); *Iafrate v. Compagnie Generale Transatlantique, et al.,* 12 F.R.D. 71 (S.D.N.Y. 1951). See also *Condol v. Baltimore & O. R. Co.,* 199 F.2d 400 (D.C. Cir. 1952); *Binger v. Unger, et al.,* 6 F.R.D. 44 (S.D.N.Y. 1946).

Since the complaint is now to be stricken for failure to comply with Rule (a) and (e), the questions engendered by invocation of Rule 12 are not reached. The Court's concern over the possibility that the fifty-six plaintiffs may conceivably have a grievance redressable here is the sole reason that the order now to be made is not final. However, the Court hereby explicitly warns plaintiffs and their counsel that one more failure to abide by Rule 8(a) and (e) might result in outright dismissal. See *Agnew v. Moody,* 330 F.2d 868 (9th Cir. 1964); *Maddox v. Shrover,* 302 F.2d 903 (D.C. Cir. 1962).

Defendants' motion to strike is hereby granted. Plaintiffs may file an amended complaint within thirty days.

Dated: January 11, 1965.

/s/ STANLEY A. WEIGEL
Judge

In The United States District Court For The Northern District of California, Southern Division

GEORGE R. WILLIAMS, et al., *Plaintiffs,* vs. PACIFIC MARITIME ASSOCIATION, a non-profit corporation, et al., *Defendants.*	No. 42284

After consideration of the Complaint, Amended Complaint, Second Amended Complaint and Third Amended Complaint, the transcripts of May 25 and 27, 1964, June 2, 1964, August 31, 1964, October 5, 1964, November 30, 1964, March 15, 1965 and June 7, 1965, all the declarations and affidavits presented by each side and particularly the affidavits of B. H. Goodenough and J. A. Robertson, all the memoranda and points and authorities presented by each side, all the notices of motions and motions filed, together with any resulting orders and memorandum opinions, and the oral argument of counsel, Sidney Gordon appearing for those plaintiffs filing the Third Amended Complaint, Richard Ernst and Michael Hone appearing for Pacific Maritime Association, and Norman Leonard appearing for the other defendants,

IT APPEARING TO THIS COURT that it has no jurisdiction over the causes of action pleaded in the Third Amended Complaint, that exclusive jurisdiction over the alleged wrongful acts lies in the National Labor Relations Board, that this Court has no jurisdiction over the individually-named defendants, that it has no jurisdiction to issue the requested injunction due to the Norris-LaGuardia Act, that

no breach of contract is or can be pleaded, that plaintiffs do not have standing to sue, that the applicable statute of limitations had expired prior to the filing of this action, and that plaintiffs, although given an opportunity to present their claim to an arbitrator, have failed and refused to do so, and

IT FURTHER APPEARING that the plaintiffs represented by Mr. Gordon have filed three prior complaints, each of which has been dismissed, that the acts complained of do not involve a breach of the collective bargaining contract but, if anything, involve unfair labor practices, and that the plaintiffs represented by Mr. Gordon have shown no possible basis under which they might be able to plead a cause of action within this Court's jurisdiction,

IT IS HEREBY ORDERED that the proposed injunction be and is hereby denied, and that the Third Amended Complaint be and is hereby dismissed without leave to amend.

Dated: July 19, 1965.

/s/ GEORGE B. HARRIS
United States District Judge

Not Approved as to form only.

SIDNEY GORDON
July 7, 1965

In The United States District Court
Northern District of California
Southern Division

GEORGE R. WILLIAMS, et al., *Plaintiffs,* v. PACIFIC MARITIME ASSOCIATION, et al., *Defendants.*	Civil No. 42284

ORDER DISMISSING FOURTH AMENDED COMPLAINT

Defendants in the above-entitled action have moved to dismiss the Fourth Amended Complaint. On June 21, 1965, this court dismissed, without leave to amend, the Third Amended Complaint. On the same day, the Fourth Amended Complaint was filed on behalf of certain plaintiffs who, since the inception of the action, had procured new counsel. On August 2, 1965, those plaintiffs remaining with original counsel, and as to whom the Third Amended Complaint had been dismissed without leave to amend, filed notice of appeal. On August 16, 1965, this court granted leave, nunc pro tunc, to file the Fourth Amended Complaint. On the same day, the action on behalf of those plaintiffs named in the Fourth Amended Complaint was severed from the action on behalf of those plaintiffs who were then and now proceeding before the Court of Appeals. Also on August 16, 1965, the instant motions to dismiss the Fourth Amended Complaint came on regularly for hearing and, having been fully briefed and argued, were submitted for decision.

In a formal order filed on July 20, 1965, this court stated the grounds for dismissing the Third Amended Complaint

as follows: It appears to this court "that it has no jurisdiction over the causes of action pleaded in the Third Amended Complaint, that exclusive jurisdiction over the alleged wrongful acts lies in the National Labor Relations Board, that this Court has no jurisdiction over the individually-named defendants, that it has no jurisdiction to issue the requested injunction due to the Norris-LaGuardia Act, that no breach of contract is or can be pleaded, that plaintiffs do not have standing to sue, that the applicable statute of limitations had expired prior to the filing of this action, and that plaintiffs, although given an opportunity to present their claim to an arbitrator, have failed and refused to do so . . . "

Notwithstanding that the Fourth Amended Complaint is more artfully drafted than its predecessors, and notwithstanding that the language and phraseology of the Fourth Amended Complaint are directly inspired by the most recent Supreme Court decisions on the subject of §301 suits, it appears to this court that the underlying events which give rise to the allegations in the complaint, and the basic issues to which these allegations give rise, are identical to, and not different from, the events, allegations and issues involved in the Third Amended Complaint.

Accordingly, IT IS HEREBY ORDERED that the Fourth Amended Complaint be, and the same hereby is, DISMISSED without leave to amend.

Dated: October 8, 1965.

GEORGE B. HARRIS
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GEORGE R. WILLIAMS, et al., *Appellants,* vs. PACIFIC MARITIME ASSOCIATION, et al., *Appellees.*	No. 20,719

[August 28, 1967]

Appeal from the United States District Court
for the Northern District of California
Southern Division

Before POPE, HAMLEY and MERRILL, Circuit Judges.

Pope, Circuit Judge:

This is an appeal from an order dismissing the fourth amended complaint. This complaint alleges that the defendant Pacific Maritime Association represents all the employers who bargain with employee members of the International Longshoremen's and Warehousemen's Union (ILWU) and its affiliated local union, Local No. 10. ILWU and Local 10, also defendants, are labor unions, and ILWU is the certified collective bargaining representative for all employees of the employer members of Pacific Maritime Association (PMA) on the Pacific Coast engaged in loading and unloading vessels and operations incidental thereto including warehousing. ILWU and Local 10 are the exclusive bargaining representatives for all such employees.

Heretofore PMA signed a succession of collective bargaining agreements with ILWU and Local 10. At the time here in question an agreement was in effect covering the

period June 16, 1961 to July 1, 1966. Rules relating to registration and deregistration of longshoremen in the Port of San Francisco, adopted about March 18, 1958, were a part of that agreement, and remained in effect until new rules relating thereto were adopted about June 17, 1963.

The complaint then alleges that the two labor unions, ILWU and Local 10, as exclusive bargaining representatives exercising statutory rights, owed a fiduciary duty to all longshore employees under this agreement, including Williams and 50 other employees who are made plaintiffs. This duty, it is alleged, includes the duty to represent such employees fairly, and to give all such employees an opportunity to know of and to be heard concerning all collective agreements and changes and modifications thereof.

The collective bargaining agreement provided for two classes of longshoremen. One was Class A, who had priority to available work. The other was Class B, who had limited rights to available work, and were not eligible to membership in Local No. 10. The rules stated standards for class B longshoremen, and standards and procedures for their promotion to class A and for their possible deregistration.

Up until June 17, 1963, all plaintiffs were class B longshoremen under the collective bargaining agreement. They were, and had been for four years, registered as such and in good standing. It is alleged on the date mentioned the defendants (employer and unions) decided on deregistration of the plaintiffs. This was purportedly made pursuant to a new set of rules adopted a few weeks prior thereto. Plaintiffs were never informed of those new rules; they were never given an opportunity to be heard respecting their application.

It is alleged that these new rules were arbitrary, not reasonably relevant to the treatment afforded class B long-

shoremen; they were capricious, arbitrary and unfair, particularly as they were applied retroactively and to conduct that was not a violation of any rule when it occurred; and that they were applied discriminatorily against plaintiffs.

Plaintiffs allege they have exhausted all remedies under the agreement and have finally been deregistered so that they are now without livelihood, and that in agreeing to these new rules the unions have failed to represent plaintiffs fairly and have arbitrarily denied them their rights to work as longshoremen.

Other class B longshoremen were not deregistered. It is alleged that plaintiffs were thus discriminated against, and they were denied their rights under the union contract, all to plaintiffs' damage.

Because the ruling is based not only upon the complaint and the motion to dismiss it, but also upon matters presented by affidavit outside the pleading, the order appealed from was in fact an order for summary judgment under Rule 56 as required by Rule 12(b).

The complaint combines two distinct claims: one is a claim similar to that involved in Vaca v. Sipes, (Feb. 27, 1967), 386 U.S. 171,[1] and the other is a claim by the em-

---

1. Page 177: "It is now well established that, as the exclusive bargaining representative of the employees in Owens' bargaining unit, the Union had a statutory duty fairly to represent all of those employees, both in its collective bargaining with Swift, see Ford Motor Co. v. Huffman, 345 U.S. 330; Syres v. Oil Workers International Union, 350 U.S. 892, and in its enforcement of the resulting collective bargaining agreement, see Humphrey v. Moore, 375 U.S. 335. The statutory duty of fair representation was developed over 20 years ago in a series of cases involving alleged racial discrimination by unions certified as exclusive bargaining representatives under the Railway Labor Act, see Steele v. Louisville & N.R. Co., 323 U.S. 192; Tunstall v. Brotherhood of Locomotive Firemen, 323 U.S. 210, and was soon extended to unions certified under the N.L.R.A., see Ford Motor Co. v. Huffman, supra. Under this doctrine, the exclusive agent's statutory authority to represent all mem-

ployees against the employer of the kind contemplated by Sec. 301 of the Labor Management Relations Act, 29 U.S.C.A. § 185. (The plaintiff in Vaca also asserted a second claim against the employer.)

The first of these two types of claims, like the one in Vaca, is not based upon an alleged breach of contract between the union or the employee, and the employer, but it is based upon what the Supreme Court calls the "statutory duty of fair representation" of the employees by the union. This doctrine, which originated with Steele v. Louisville & N.R. Co., and which has been extensively applied and extended (see footnote 1, supra), states the fiduciary duty of a union which is the exclusive bargaining representative of employees whether union members or not.

The union contract here provides for several joint labor relations committees. The order deregistering the plaintiffs was the joint order of the Joint Coast Labor Relations Committee composed of representatives of both PMA and the Union. Each group had equal vote or power. "Each side of the Committee shall have equal vote." Thus it appears that the union representatives joined in the deregistration.

The order appealed from indicates that one reason for the court's dismissal of the complaint was that it thought it had no jurisdiction over such a cause of action because exclusive jurisdiction over the alleged wrongful acts lay in the National Labor Relations Board and that the Labor Management Relations Act preempted jurisdiction to deal with breach of fair representation by a union to the Labor Board.

---

bers of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct"

In their first briefs in this case the appellees took that view relating to preemption. That view must now be rejected because of the decision in Vaca, supra, which dealt with a similar contention that a court could not entertain a suit of that character because of such preemption of jurisdiction to the Labor Board. The Court there upheld the jurisdiction of the court to entertain such a suit predicated on claims of unfair representation. It said (pp. 180-181): "A primary justification for the pre-emption doctrine —the need to avoid conflicting rules of substantive law in the labor relations area and the desirability of leaving the development of such rules to the administrative agency created by Congress for that purpose—is not applicable to cases involving alleged breaches of the union duty of fair representation."

This preemption doctrine was sought to be applied by counsel in the Vaca case because the Board had held in its Miranda Fuel decision, enforcement denied, 326 F. 2d 172, that a violation of the duty of fair representation by a union was an unfair labor practice over which the Board had jurisdiction. The Fifth Circuit, Local 12 United Rubber Workers v. NLRB, 368 F. 2d 12, upheld the Board's Miranda Fuel doctrine. In Vaca, the Supreme Court did not express any view as to whether Miranda Fuel was right or wrong because the Court held, as indicated above, that assuming jurisdiction in the Labor Board, there was nevertheless an exception to the preemption doctrine which permitted the maintenance of the Vaca suit in a court.

The argument of the Supreme Court is a very cogent one. For instance, the Court noted that the Board's general counsel had unreviewable discretion to refuse to institute an unfair labor practice complaint. Therefore the injured party having a valid claim based on denial of fair repre-

sentation could not be assured of a remedy if the courts were deemed ousted of their traditional jurisdiction in such cases. At any rate, this reason given by the trial court for denying jurisdiction is demonstrably wrong in view of Vaca.

On its face, the complaint here would appear to state a claim against the union based on the doctrine requiring fair representation of all employees. It alleges that the union is the certified collective representative, and the exclusive collective bargaining representative for all employees loading and unloading vessels; that there was a "collective bargaining agreement" and that as a part thereof, there were certain rules respecting registration and de-registration of longshoremen in the Port of San Francisco, these rules being adopted in 1958.

It is set forth that longshoremen fell into two categories of registration, the preferred employees being called Class A and the limited registered longshoremen, Class B; that in June, 1963, all the plaintiffs were registered as Class B longshoremen, were in good standing, were guilty of no current infractions, had corrected all past violations of rules, and were entitled to assignment for work and were in fact regularly assigned to work.

It is alleged that on the 17th day of June, 1963, the defendants jointly decided on the promotion of some 400 Class B longshoremen to the Class A category and at the same time decided upon the de-registration of all other existing Class B longshoremen, including the plaintiffs who were thereupon notified of their immediate and summary de-registration.

It is alleged that the decision for de-registration of the plaintiffs was made pursuant to "an alleged new set of rules, adopted by the defendants jointly a few weeks prior to the summary notification of the . . . decision to de-

register them"; that plaintiffs had been denied notification or knowledge of the adoption of said new rules and that they were never given an opportunity to present their rights or case or views. Both the employers and the union did this.

As appears from information in certain affidavits before the court, the collective bargaining agreement provided for a series of joint labor relations committees; a joint board committee, a joint area committee, and a joint coast committee. These committees are composed of three or more representatives designated by the union and three or more representatives designated by the employers with each side of the committee having equal vote. The action de-registering the plaintiffs was taken by one or more of these committees and likewise the new set of rules was adopted by the same committee, and since under the agreement each side of the committee had an equal vote, it is plain that these things could not have been done except with the approval of the union representatives.

The complaint attacks the alleged new rules as arbitrary, not reasonably relevant to the determination of which Class B longshoremen should be promoted to Class A; that they were irrelevant and capricious in determining who should be de-registered; that the effect of de-registration would deprive a longshoreman of future opportunity for employment; and then paragraph 23 alleges as follows:

"That the rules were arbitrary and unfair as amended in that determination to promote some Class B longshoremen and to de-register others was based on a retroactive application of alleged violations; thereby severely, arbitrarily and capriciously penalizing conduct which was not grounds either for denying promotion to Class A or for deregistration at the time the alleged acts were committed. That conduct which was ground only for a nominal monetary

fine, or a reprimand, or for minor disciplinary penalty was retroactively made ground not only for denying promotion to Class A but for total deregistration. That all of this was contrary to the rules which had existed at the time of the alleged acts and for a long time thereafter."

It is to be noted that the complaint is not directed at the failure to put the plaintiffs in Class A. It is related solely to the action taken by the union or its representatives in concurring in the deregistration of these plaintiffs as Class B longshoremen.

It should be noted, also, that the appellants assert the complete invalidity of the so-called new rules. Some of the affidavits filed on behalf of the defendants purport to set out what these new rules were. But, if there were an agreement to such rules, they were not adopted in accordance with the requirements of the basic collective bargaining agreement which provided in Section 22: "No provision or term of this agreement may be amended, modified, changed, altered, or waived except by written document executed by the parties hereto." An examination of the text of the so-called new rules discloses that they do not cover or authorize de-registration of Class B longshoremen; they deal only with the requirements for promotion from class B to class A.

In connection with the defendants' motions to dismiss, they filed certain affidavits. One affidavit was by B. H. Goodenough, vice-president of the Pacific Maritime Association. Three additional affidavits were filed by J. A. Robertson, secretary of Pacific Maritime Association. Some of these affidavits were filed prior to the filing of the fourth amended complaint but we can consider them as though they were filed contemporaneously with the motions to dismiss that complaint. None of these affidavits would tend to

show that the plaintiffs could not prove the aforesaid allegations of their complaint with respect to the failure of fair representation by the union. None of them would serve to show the validity of the so-called new rules by which these joint committees purported to de-register the plaintiffs. None shows that the rules have anything to do with de-registration of class B longshoremen; nor do they show that any of the plaintiffs deserved de-registration or that they were properly de-registered under any rules, valid or invalid.

Some of the affidavits disclose the powers of joint committees, referred to, and they indicate the manner in which the plaintiffs became registered and they show that the joint committees found against these plaintiffs and ordered them de-registered. But the basis of the complaint is that the union representatives on these joint committees should not have taken such action in that by agreeing thereto they had failed in their fiduciary duty to all longshoremen employees.

As indicated above, the complaint alleged that these plaintiffs were in good standing, were guilty of no current infractions, had corrected all past violations of rules, and were entitled to the assignment for work. Nothing in any affidavit negatives the allegation these plaintiffs were arbitrarily and capriciously being penalized for conduct which was not ground for de-registration at the time the acts were committed; that the de-registration was a retroactive application of alleged violations of invalid rules. Furthermore, many of the assertions made in these affidavits are not entitled to consideration under Rule 56(e) which provides that affidavits must be made on personal knowledge, and that the affiant is competent to testify to the matters stated. None of these affiants would be competent to say whether any of the plaintiffs were guilty of any misconduct or rule

violation, or that the action of the union members of these joint committees was anything other than a disregard of the union's duty of fair representation.

As a matter of fact a reading of the affidavits show that they are primarily addressed to the matters relating to the other claim asserted here, namely, the claim against the employer for violation of the collective bargaining agreement. They are designed to support an argument made in connection with that claim, namely, that the plaintiffs cannot recover on the contract because they failed to exhaust the grievance procedures set forth in the contract.

Of course, that has nothing to do with the claim against the union because, as indicated in all the decisions cited in Vaca, that claim is based upon a general duty of fair representation based upon a fiduciary obligation. Suppose we were to concede for a moment that the action against the employer cannot be maintained for failure to exhaust the contract grievance procedures. That might warrant a partial summary judgment dismissing the complaint as against the employer. It would not warrant the broad dismissal as made by the court. In fact, if it were shown that any one of the plaintiffs was entitled to relief, the order of dismissal would be improper. One of the plaintiffs, Stanley L. Weir, filed his own affidavit in opposition to the motions to dismiss. In it he states facts indicating a calculated effort on the part of the union representatives to bring about this affiant's de-registration through conduct indicating hostility, malice and bad faith on the part of union representatives. It is sufficient to say that it shows insistence on false charges, refusal to hear the employee and deliberate evasion of fair consideration. Even if Weir were the only plaintiff who made a showing of this character, the complaint should not have been dismissed as against him.

This brings us to the portion of the case which is based upon a claim of breach of the collective bargaining agreement by the employer. The differences between the parties here turn upon their varying construction of the language used in that contract.

The employers assume that the claim against them is based upon Section 13 of the agreement and argue that Section 13 grievance procedures were never complied with in that the matter was not carried to arbitration. This section reads as follows: "SECTION 13 NO DISCRIMINATION—13.1 There shall be no discrimination in connection with any action subject to the terms of this Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin or religious or political beliefs."[2] The appellants say that this has nothing to do with their complaint. They contend this is not a Section 13 discrimination; that it was simply action taken to stop these men from working;—in short, that they were fired as Class B longshoremen.[3]

---

2. It is important to read in connection with Section 13 other sections that make specific reference to it. For instance, Section 17.4, on page 69 of the agreement, makes specific reference to the violations of Section 13. This section is followed by others which may reasonably be construed to refer to grievances arising out of Section 13. These sections, particularly Section 17.43, provide for the carrying of grievance procedures through to arbitration.

3. The appellants' argument on this section reads as follows: "The fact that the defendants *for the first time, long after this litigation was first commenced,* for their own ulterior purposes, designated the complaints of the plaintiffs as being complaints of discrimination falling within the ambit of Section 13.1, does not make them such. The complaints of these plaintiffs are governed by the second sentence of Section 17.2 which reads as follows:

> '17.2 Grievances arising on the job shall be processed in accordance with the procedure hereof beginning with 17.21. Other grievances as to which there are no specific provisions

Appellants then point to Section 17.261[4] of the agreement which is a general provision for grievance procedures grow-

herein shall be processed in accordance with the provisions hereof beginning with 17.23.'

"Section 17.261 which was quoted supra, is the culminating section which commences with Section 17.23. For the information of this Court those intermediate sections read as follows:

'17.23 If the grievance is not settled in 17.21 and 17.22 or does not arise on the job, it shall be referred to the Joint Port Labor Relations Committee which shall have the power and duty to investigate and adjudicate it.

'17.24 In the event that the Employer and Union members of any Joint Port Labor Relations Committee *shall fail to agree upon any question before it,* such question shall be immediately referred at the request of either party to the appropriate Joint Area Labor Relations Committee for decision.

'17.25 In the event that the Employer and Union members of any Joint Area Labor Relations Committee *fail to agree on any question before it,* such question shall be immediately referred at the request of either party to the Area Arbitrator for hearing and decision, and the decision of the Area Arbitrator shall be final and conclusive except as otherwise provided in 17.26. (Emphasis added.)

'17.26 The Joint Coast Labor Relations Committee has jurisdiction to consider issues that are presented to it in accordance with this Agreement and shall exercise such jurisdiction where it is mandatory and may exercise it where such jurisdiction is discretionary as provided in 17.261, 17.262 and other provisions of this Agreement.'

"There is, consequently, no basis for the claim on the part of the defendants that the plaintiffs failed to exhaust their internal remedies by appealing to the Coast Arbitrator."

4. "17.261 Any decision of a Joint Port or Joint Area Labor Relations Committee or of an Area Arbitrator claimed by either party to conflict with this Agreement shall immediately be referred at the request of such party to the Joint Coast Labor Relations Committee (and, if the Joint Coast Labor Relations Committee cannot agree to the Coast Arbitrator, for review). The Joint Coast Labor Relations Committee, and if it cannot agree, the Coast Arbitrator, shall have the power and duty to set aside any such decision found to conflict with this Agreement and to finally and conclusively determine the dispute. It shall be the duty of the moving party in any case brought before the Coast Arbitrator under the provisions of this 17.261 to make a prima facie showing that the decision in question conflicts with this Agreement, and the Coast Arbitrator shall pass upon any objection to the sufficiency of such showing before ruling on the merits."

ing out of actions of the joint committees. This provides for carrying the grievance to the Joint Coast Labor Relations Committee, and then provides as follows: "and, if the Joint Coast Relations Committee cannot agree, to the Coast Arbitrator for review." But in this instance the Joint Coast Labor Relations Committee did agree; hence, the appellants say, there is no provision requiring carrying the matter to arbitration since the action of the Joint Coast Labor Relations Committee would be final according to the contract.

We think that the appellants have a good point here and that it is arguable that what happened to them was not the kind of discrimination described in Section 13. We have here a very complicated set of facts. Numerous affidavits were filed and some of them have inaccuracies in them. For instance, the Goodenough and Robertson affidavits, for the employers, asserted that the plaintiffs complained of violations of Section 13 of the contract. That is not correct. The record contains numerous copies of the written complaints by the plaintiffs. They are substantially the same as that contained in a letter written by each of the plaintiffs, a copy of which appears in the margin.[5] We have been

---

5. "July 27, 1963

R. R. Holtgrave, Secretary
James Kearny, Chairman
JLRC (PMA-ILWU)
16 California Street
San Francisco, California

Dear Sirs: Your committee de-registered me on June 17. On July 24, I received your letter denying my hearing appeal. In so doing you consummated an action that is discriminatory. You have not judged all the men involved by the same standards. I appeal your decision and request another hearing as stipulated, where I will prove and document this discrimination.

I have never been able to get from you an official statement specifying the alleged charges against me, nor did your committee produce documents to substantiate the charges.

Would you please correct this situation for the next hearing.

Sincerely."

unable to find any references to violations of Section 13. The complaints simply allege that they were "deregistered" as Class B longshoremen. To this extent, at any rate, the affidavits of these officers disclose a misunderstanding on their part.

In view of this very long and complicated record of over 700 pages, with numerous affidavits and pleadings, and an unsatisfactory record of alleged change in rules, we may have here what was called in Kennedy v. Silas Mason Co., 334 U.S. 249, 256, a "welter of new contentions and statutory provisions". In that case the Court said: "In addition to the welter of new contentions and statutory provisions we must pick our way among over a score of technical contracts, each amending some earlier one, without full background knowledge of the dealings of the parties. The hearing of contentions as to disputed facts, the sorting of documents to select relevant provisions, ascertain their ultimate form and meaning in the case, the practical construction put on them by the parties and reduction of the mass of conflicting contentions as to fact and inference from facts, is a task primarily for a court of one judge, not for a court of nine." The Court there held that under the circumstances, which involved a summary judgment, it was better judicial administration not to affirm the summary judgment, but rather to remand the case for hearing and findings by the district court.

We are satisfied that a more accurate picture of the dispute here before us would be obtained if the trial court held a hearing and made findings which might well be based upon proper evidence as to just what transpired here.

Reversed and remanded for further proceedings consistent with this opinion.

MERRILL, Circuit Judge, Concurring:

What we hold here is that plaintiffs' claims are not defeated by either primary jurisdiction of the NLRB over the claim against the union or failure of plaintiffs to press their grievances against the employers to arbitration. Remand is thus called for. For the guidance of the District Court on remand we also point out the insufficiency of the present record to support summary disposition of the case, and point up complexities with which the District Court, rather than this court, should struggle in the first instance.

I should like to add to the complexities with which Judge Pope has dealt one further aspect of the case which seems relevant to me, and with which I would hope the District Court, with aid of counsel, might concern itself. This, in general, is the scope and source of the collective bargaining agreement—the self-imposed body of law binding upon the association and the union in their dealings with each other. Specifically, I am in doubt as to the nature and function of the joint committees. Is their function purely adjudicatory —the resolution of grievance disputes? Or have they rule-making powers which invest them with authority to take action which then becomes a part of the body of law constituting the collective bargaining agreement? What was the nature of their action in deregistering plaintiffs? Was it rule making, or adjudication?

It seems to me that answers to these questions are relevant to the issues of whether the union "agreed" to deregistration; and of whether, by recognition of the deregistration, the employers violated the agreement as it then existed.

United States Court of Appeals
For the Ninth Circuit

GEORGE R. WILLIAMS, et al.,
Appellants,

vs.

PACIFIC MARITIME ASSOCIATION, et al.,
Appellees.

No. 20719

APPEAL from the United States District Court for the Northern District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and remanded.

Filed and entered August 28, 1967.

United States Court of Appeals
For the Ninth Circuit

GEORGE R. WILLIAMS, et al.,
Appellants,

vs.

PACIFIC MARITIME ASSOCIATION, et al.,
Appellees.

No. 20,719

[October 30, 1967]

On Appellees' Petition for Rehearing.

Before POPE, HAMLEY and MERRILL, Circuit Judges.

Counsel for the employers and counsel for the union have each filed petitions for a rehearing. An examination of the petitions indicates a misunderstanding of the reach of this court's opinion. As we read the petitions, we gather that they are based upon an assumption that this court has made findings and conclusions leading to the ultimate determination of the rights of the parties. As an examination of the opinion will disclose, it is limited to a disapproval of the summary judgment entered in the court below in view of our holding that the evidence received by the trial court suggests that were the case fully heard and the evidence available received, the appellants might well be entitled to recover.

Both petitions seem to assume that in dealing with the union's duty of fair representation we have held that any discrimination is sufficient to make a case against the

union. The argument is that we neglected to note that the discrimination must be of "hostile or invidious" nature. This is a misconstruction of our opinion.

The opinion notes what the allegations were: "It is alleged that these new rules were arbitrary, not reasonably relevant to the treatment afforded Class B longshoremen; they were capricious, arbitrary and unfair, particularly as they were applied retroactively and to conduct that was not a violation of any rule when it occurred; and that they were applied discriminatorily against plaintiffs."[1] Further along, the opinion again notes the allegations of the complaint: "The complaint attacks the alleged new rules as arbitrary, not reasonably relevant to the determination of which Class B longshoremen should be promoted to Class A; that they were irrelevant and capricious in determining who should be deregistered; . . . ." This was followed by an extensive quotation from the complaint itself alleging that the rules applied were "arbitrary and unfair" and "arbitrarily and capriciously penalizing conduct" retroactively. Our conclusion was that the determinations of the contentions of the parties would be properly for the trial court after receipt of evidence.

We think that a reexamination of our opinion will disclose that it does not foreclose the parties from a complete hearing of their several contentions upon the trial on remand.

The petitions for rehearing are denied.

---

1. This is substantially the language used in Vaca v. Sipes, 386 U.S. 171, where in describing the "duty of fair representation", the Court uses the words "arbitrary, discriminatory, or in bad faith."

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, October 30, 1967.

Before: POPE, HAMLEY and MERRILL, Circuit Judges.

ORDER DENYING PETITIONS FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petitions of appellees, filed September 27, 1967, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby are denied.

LIBRARY
SUPREME COURT. U. S

Office-Supreme Court, U.S.
FILED
FEB 29 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1967

No. 1061

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S and WAREHOUSEMEN'S UNION, an unincorporated association, *et al.*,

Petitioners,

against

GEORGE R. WILLIAMS, *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

IRVING A. THAU,
2 Cannon Street,
Poughkeepsie, New York,

FRANCIS HEISLER,
P. O. Drawer 3996,
Carmel, California,

ARTHUR BRUNWASSER,
1255 Post Street,
San Francisco, California,

Attorneys for Respondents.

INDEX

	PAGE
Questions Presented	1
Preliminary Statement (Summary of Argument)	3
Background of the Litigation	4
The Allegations of the Fourth Amended Complaint	7
The Affidavit of Stanley L. Weir	11
With Respect to the Exhaustion of Internal Remedies	26
The first two counts allege valid causes of action upon which relief may be granted under that line of cases in this Court commencing with *Steele* v. *Louisville & Nashville R.R. Co.*, 323 U.S. 192 (1944) and ending with *Vaca* v. *Sipes*, 386 U.S. 171 (1967)	41
The third count alleges a valid cause of action under Section 301a of the Labor-Management Relations Act (29 U.S.C.A., Section 185a)	53
The petitioners' reliance on *Woody* v. *Sterling Aluminum Products, Inc.*, 365 F.2d 448 (8 Cir. 1966), cert. den. 386 U.S. 957, reh. den. 386 U.S. 1027	64
CONCLUSION	66
APPENDICES:	
APPENDIX A—Affidavit of Stanley L. Weir in Opposition to Motions to Dismiss	1a
APPENDIX B—Letter, Dated August 17, 1965	55a
APPENDIX C—Fourth Amended Complaint	64a

Table of Cases Cited

	PAGE
American Communications Association v. Douds, 339 U.S. 382 (1950)	47, 48
Atkinson v. Sinclair Refining Co., 370 U.S. 238 (1962)	53
Booth v. Security Mutual, 155 F. Supp. 755	33
Born v. Cease, 101 F. Supp. 473	31
Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768	48, 49
Conley v. Gibson, 355 U.S. 41 (1957)	49, 50
Cunningham v. Erie R.R., 266 F.2d 411 (2nd Cir. 1959)	52
Consolidated Aircraft Corp., 57 N.L.R.B. 694	57
Detroy v. American Guild of Variety Artists, 286 F.2d 75 (2nd Cir. 1961) cert. den. 366 U.S. 929	35, 36
Dowd Box Co. v. Courtney, 368 U.S. 502 (1962)	53, 54
Fibreboard Paper Products Corp. v. East Bay U. of Mach. Local 1304, 344 F.2d 300 (9th Cir. 1965) cert. den. 382 U.S. 826	63
Flaherty v. McDonald, 178 F. Supp. 544	33, 34
Fort Motor Co. v. Huffman, 345 U.S. 330 (1953)	52, 59
Fuller v. Highway Truck Drivers & Helpers Local 107, 233 F. Supp. 115 (E.D. Pa. 1964)	60, 61, 62
Gainey v. Brotherhood of Railway & Steamship Clerks, 313 F.2d 318 (1963)	38, 39, 50, 51
Garner v. Teamsters, etc. Union, 346 U.S. 485	55
Gilmour v. Wood, Fire and Metal Lathers International Union, Local No. 74, 223 F. Supp. 236	56, 57

PAGE

Hardcastle v. Western Greyhound Lines, 303 F.2d 182 (9th Cir. 1962) 52

Hiller v. Liquor Salesmen's Union Local No. 2, 338 F.2d 778 (2nd Cir. 1964) 40

Humphrey v. Moore, 375 U.S. 335 (1964) 53, 57, 60, 61

ILWU v. Kuntz, 334 F.2d 165 (9th Cir. 1964) 62

Local 174 Teamsters v. Lucas Flour Co., 339 U.S. 95 (1962) 53, 54

Miranda Fuel Co. Inc., 140 N.L.R.B. 181, enforcement denied *sub nom.* N.L.R.B. v. Miranda Fuel Co., Inc., 326 F.2d 172 (2d Cir. 1963) 23

Mount v. Grand International Brotherhood of Locomotive Engineers, 226 F.2d 604 (6th Cir. 1955), cert. den. 350 U.S. 697 52

Nelson v. Johnson, 212 F. Supp. 233 37

N.L.R.B. v. Pennwoven, Inc., 194 F.2d 521 (5 Cir. 1952) 63

Pacific Maritime Association and International Longshoremen's and Warehousemen's Union, Local No. 10 (Johnson Lee), 115 N.L.R.B. No. 117 (1965) .. 24, 26

Parks v. International Brotherhood of Electrical Workers, 314 F.2d 886 (4th Cir. 1963) cert. den. 83 S.Ct. 1111 38

Plumbers and Steam Fitters Union Local No. 598 v. Dillon, 255 F.2d 820 (9th Cir. 1958) 56

Regan v. Ohio Barge Line, Inc., 227 F. Supp. 1013 (S.D.N.Y. 1964) 62

Republic Steel Corporation v. Maddox, 379 U.S. 650, 85 S.Ct. 614, 13 L.Ed. 2d 580 ..... 32, 33

Rumbaugh v. Winifrede Railroad Company, 331 F.2d 530 (4th Cir. 1964) 52, 53

PAGE

Samsing v. S & P Company, 325 F.2d 718 (1963) 40

San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959) 54, 55

Smith v. Evening News, 371 U.S. 195 (1962) 8, 10, 57

Smith v. Evening News Assn., 371 U.S. 195 (1962) 53, 54

Spielberg Mfg. Co., 112 N.L.R.B. 1080 57

Steele v. Louisville & N.R. Co., 323 U.S. 192 ..2, 7, 8, 23, 24, 41, 42, 45, 46, 47, 48, 50, 52

Syres v. Oil Workers International Union, 350 U.S. 892 2

Syres v. Oilworkers International Union, 350 U.S. 892, reversing 223 F.2d 739 ..... 53, 59

Textile Workers Union v. Lincoln Mills of Alabama, 353 U.S. 448 34

Textile Workers v. Lincoln Mills, 353 U.S. 448 57

Todd Shipyards Corp. v. Industrial Union of Marine and Shipbuilding Workers, Local 39, 344 F.2d 102 (2 Cir. 1965) 56

Tunstall v. Brotherhood, 323 U.S. 210 (1944) 47

Vaca v. Sipes, 386 U.S. 171 (1967) 40, 53, 56

Wallace Corporation v. National Labor Relations Board, 323 U.S. 248 47

Weber v. Anheuser Busch, 348 U.S. 468 55

Woody v. Sterling Aluminum Products, Inc., 365 F.2d 448 (8 Cir. 1966) cert. den. 386 U.S. 957 reh. den. 386 U.S. 1027 ..... 64, 65

Statutes Cited

	PAGE
Labor Management Relations Act, 29 USCA Sec. 141 et seq.	
Section 2(2)	4
Section 2(5)	4
Section 8(a)(1)	23
Section 8(b)(1)	23
Railway Labor Act, 45 USC § 151 et seq. Section 2	41, 42
28 USCA § 41(8)	47
28 USCA Section 1337	8
29 USCA Sec. 185 Section 301	2, 8, 10, 33, 53, 54, 57, 64, 65
29 USC Sec. 411(a)	34

Other Authority Cited

Summers, Union Powers and Workers' Rights, 49 Mich. L. Rev. 805 (1951)	37

IN THE

Supreme Court of the United States

October Term, 1967

No.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, *et al.*,

Petitioners,

against

GEORGE R. WILLIAMS, *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Questions Presented

1. May a collective bargaining representative, motivated by hostility, invidious considerations and palpable bad faith, collusively and jointly with the employer enter into *secret* oral amendments to a collective bargaining agreement which have for their purpose and intent the discriminatory discharge of certain members of a collective bargaining unit (members until then entirely in good standing) *on grounds that are solely retroactive in their application*—grounds which make alleged past conduct subject to the supreme sanction of permanent unemployability in the industry—while simultaneously engaged in the process

of hiring new men, men theretofore strangers to the industry, to replace them? *

2. Are suits in the District Court for redress of the breach by a collective bargaining representative of its statutory duty of fair representation in the negotiation and the administration of alleged contract amendments—suits of the type of *Steele* v. *Louisville & N.R. Co.*, 323 U.S. 192 and *Syres* v. *Oil Workers International Union*, 350 U.S. 892 —within the jurisdiction of the District Court or are they pre-empted by and solely under the cognizance of the N.L.R.B.?

3. Is a Section 301 suit (29 U.S.C.A., Sec. 185) against an employer for breach of a collective bargaining agreement in the wrongful discharge of the respondents, in which it is alleged that such discharge was accomplished with the collusion of the collective bargaining representative and that the collective bargaining representative in such collaboration was motivated by hostility, invidious considerations and bad faith, within the jurisdiction of the District Court or is such suit pre-empted by and solely under the cognizance of the N.L.R.B.?

4. Have the respondents (as a predicate of their Section 301 suit) exhausted the internal remedies—the grievance machinery—available to them?

5. Does the complaint allege causes of action upon which relief may be granted?

---

* Amendments, moreover, that were *not* reduced to writing (App. "B", pp. 55a-63a) and which do not comply with that provision of the collective bargaining agreement which reads: "22.1 No provision or term of this Agreement may be amended, modified, changed, altered or waived except by a written document executed by the parties hereto." (R. 4, p. 84; Pet. Br., App. 18)

Preliminary Statement
(Summary of Argument)

The respondents, longshoremen (the overwhelming majority of them Negroes) employed in the Port of San Francisco were summarily deregistered (that is, prohibited permanently from any further employment on the Pacific Coast as longshoremen or in allied occupations) by the *joint* action of the unions and the employer. They were given no specification of charges against them. They were not permitted to defend themselves. They were given no hearing. Although they were until the moment of deregistration in good standing, were guilty of no current infractions, had corrected all past violations, if any, of the rules of their employment, were entitled to assignment for work and were, in fact, regularly assigned to work, their deregistrations were accomplished ostensibly pursuant to Section 9 of a memorandum entitled "Memorandum of Rules Governing Registration and De-Registration of Longshoremen in the Port of San Francisco", dated March 18, 1959 (App. "A", pp. 17a-21a).* A copy of this memorandum is also annexed to the Fourth Amended Complaint as Exhibit "A" (R. 123-130).

Long afterwards—in fact, only after this litigation had been commenced—the petitioners sought to justify those deregistrations by claiming that *secretly,* some time in 1963 prior to the deregistrations, they had *orally* enacted certain new rules *which had retroactive effect only* and that it was pursuant to these "new Rules of 1963" that, in reality, the

---

* Ostensibly because the memorandum although it provides various grounds for deregistration does not encompass any of the alleged grounds actually claimed to have been utilized by the petitioners (App. "A", pp. 14a-15a).

respondents had been fired and blacklisted.* It is, therefore, argued that two main lines of precedent sustaining the instant complaint are valid. First, the breach of the statutory duty of fair representation by the union and, secondly, the breach of the collective bargaining agreement by the employer with the unlawful aid, assistance and collusion of the union. It is, likewise, argued that the respondents, prior to the commencement of this lawsuit, exhausted all internal remedies available to them. It is thereafter concluded that the decision of the Court of Appeals ought consequently to stand, that the complaint ought to be sustained for sufficiency, that the litigation itself ought to be permitted to go on to plenary trial on the merits and that, finally, the petition for a writ of certiorari ought to be denied.

Background of the Litigation

Respondents commenced their employment as longshoremen in San Francisco in 1959. Their employer, petitioner P.M.A., is a multi-employer bargaining representative of all of the stevedoring companies on the Pacific Coast and an employer within the meaning of Section 2(2) of the Labor Management Relations Act, 29 U.S.C.A., Sections 141 *et seq.* The petitioner, International Longshoremen's and Warehousemen's Union, is the certified collective bargaining representative for longshore employees on the Pacific Coast and recognized as such under Section 2(5) of the Act. Local No. 10 is the international union's local affiliate in San Francisco. Respondents are not now and never have been members of the union.

Over the past thirty years the petitioners have negotiated and entered into a series of collective bargaining

---

* It is important to note that the purported "new Rules of 1963" do *not* provide for deregistration (App. "B", pp. 56a-57a). The Court of Appeals in its opinion astutely made the same observation (Pet. Br., App. 19).

agreements. The most recent such agreement at the time of the District Court proceedings and the one involved in this litigation was the "Pacific Coast Longshore Agreement, 1961-1966." A copy of this agreement appears at R. 4.

The agreement provides for two classifications of longsharemen: full registration and limited registration. First preference of employment and dispatch is given to full registered longshoremen and second preference is given to limited registered longshoremen (R. 4, Section 8.41, pp. 45-46).* The agreement further provides for the establish-

---

* The petitioners constantly refer to these respondents, limited or Class "B" longshoremen, as "probationary" longshoremen. They do so as if the constant repetition of the term "probationary" will, in and of itself, serve to convert the assertion into the fact. But the fact is that these respondents were not probationary longshoremen. They were no more probationary longshoremen than the Class "A" men were probationary, except to the extent that the very structure of power erected by the union under the collective bargaining agreement gave to the Class "A" men, by virtue of their membership in the union, a virtual veto with respect to deregistration. The distinction between the Class "A" and the Class "B" longshoremen was not predicated on the fact that the former had tenure and the latter did not. Rather the distinction is that the former had seniority over the latter and, therefore, first call on all available work, choice as to its acceptance and certain retirement benefits under the collective bargaining agreement. But Class "A" men had no greater tenure and were no more probationary than Class "B" men. The Trial Examiner in the National Labor Relations Board hearings was not impressed with the petitioners constant reiteration that the respondents were probationary. His comment with respect to this matter (Decision, p. 17, fn. 28) is succinct and warrants quoting: "The descriptions of Class B registrants as 'under probation' and as 'probationary types' have the earmarks of conclusions. *Such a status is not spelled out in the contract or any of the regulations governing registration.* The fact that Class A registrants have preference in dispatch and that Class B men may be deregistered for 'cause' does not of itself establish a probationary status for the latter. *Under Section 17.81 of the contract, Class A longshoremen are also subject to deregistration for prescribed cause.* The descriptives appear to me to be a matter of semantic choice. . . ." (R. 256). (Italics added)

ment of joint committees in each port composed equally of representatives of the employer and the union (R. 4, Section 17.1, pp. 63-64). In 1958 the Port Committee in San Francisco issued a memorandum entitled, "Memorandum of Rules Governing Registration and Deregistration of Longshoremen in the Port of San Francisco, March 18, 1958". A copy of this memorandum, hereinafter referred to as the "1958 Rules" is attached to the Fourth Amended Complaint, marked Exhibit "A", appears at R. 123-130 and in part also in App. "A" at 17a-21a. These 1958 Rules together with a certain group of rules known as the "Low-Man-Out" rules (R. 192-194) governed the conduct of the limited registration longshoremen and specified the penalties which might be assessed against them for violations. *Significantly, neither of these sets of rules provided for the deregistration of the respondents under the circumstances claimed by the petitioners.* The 1958 Rules likewise established the practice and procedure for the advancement of longshoremen from Class "B" to Class "A". Both sets of rules were enacted by the petitioners under the terms of the collective bargaining agreement in effect prior to the present agreement and continued in effect under the present agreement.

On June 17, 1963, the respondents were notified of their summary deregistrations by the Joint Port Labor Relations Committee, allegedly because of certain *unstated* violations of the 1958 Rules (App. "A", pp. 14a-15a). Later, during the course of this litigation, the petitioners took the position that the deregistrations were actually pursuant to the oral secret 1963 Rules (App. "B", pp. 56a-57a). They now, for the first time in this Court, take the position that in some obscure manner which they do not define, the deregistrations were accomplished by some vague combination of the two sets of rules (Pet. Br., p. 7).

By reason of the deregistrations the respondents were no longer dispatched for employment from the dispatch

hall operated jointly by the petitioners and were no longer eligible to work as longshoremen on the Pacific Coast.

The original complaint was dismissed by the District Court for failure to adhere to the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. Thereafter, the First and Second Amended Complaints were also dismissed for the same shortcomings. A Third Amended Complaint was filed, alleging simply that the petitioners had conspired to deprive the respondents of their right to work (R. 7-12). *While the Third Amended Complant was before the District Court, the respondents who are now before this Court, obtained present counsel and served the Fourth Amended Complaint* (App. "C", pp. 64a-81a). *The Fourth Amended Complaint is the only pleading prepared by present counsel for the respondents.*

The Allegations of the Fourth Amended Complaint

The Fourth Amended Complaint (R. 107-129; App. "C", pp. 64a-81a) sets forth five causes of action. The first two causes of action are predicated on the breach by the union petitioners of their statutory duty to give fair representation to all members of the bargaining unit, to act in good faith and without hostile or invidious discrimination based upon irrelevant or invidious distinctions. The first cause of action relates to the negotiation of the secret oral 1963 Rules and the second cause of action relates to the administration of the collective bargaining agreement as a whole. The petitioner P.M.A. is charged with cooperating with the union petitioners and accepting the benefits of this discriminatory treatment. This breach of the statutory duty of fair representation by a collective bargaining representative was first recognized and upheld by this Court in *Steele* v. *Louisville & N.R. Co.*, 323 U.S. 192, and has been followed in this Court under both the Railway Labor Act and the Labor Management Relations Act. It is the

contention of the respondents that the *Steele* line of cases clearly establishes the jurisdiction of the District Court to adjudicate the first two causes af action, 28 U.S.C.A., Section 1337. The third cause of action is predicated on Section 301 of the Labor Management Relations Act (29 U.S.C.A., Section 185). *Smith* v. *Evening News,* 371 U.S. 195 (1962).

The first cause of action alleges that as of June 17, 1963, all of the respondents had earned their livelihood and had been regularly employed as longshoremen for approximately four years (Paragraphs 17-18; App. "C", p. 70a); were registered as Class "B" longshoremen, were in good standing, were guilty of no current infractions and had corrected all past violations of the rules, if any violations there were (Paragraph 19; App. "C", p. 70a); were notified of their immediate and summary deregistration by the petitioners at the same time that the petitioners decided to promote more than four hundred other Class "B" longshoremen to the Class "A" category (Paragraph 20; App. "C", pp. 70a-71a); that the decision to deregister the respondents and promote others was purportedly made pursuant to a new set of oral rules jointly and secretly adopted by the petitioners shortly prior to the notification of the respondents by the petitioners of the latter's decision to deregister them; that the respondents were at no time notified or otherwise informed that changes in the rules to their detriment were being considered or contemplated; that the respondents were not given an opportunity to present their point of view and interest at any time prior to the adoption of the new rules; and that the respondents were never given notice of the existence of the new rules until they were informed of the decision already taken to deregister them. (Paragraph 21; App. "C", 71a). It is further alleged that the new rules were arbitrary and not reasonably relevant to the determination as to which Class "B" longshoremen should be promoted to the Class "A" category (Paragraph

22) and wholly irrelevant and capricious in determining who should be deregistered (Paragraph 23). The complaint then goes on to allege:

> "23. That the rules were arbitrary and unfair as amended in that the determination to promote some Class B longshoremen and to deregister others was based on a retroactive application of alleged violations thereby severely, arbitrarily and capriciously penalizing conduct which was not grounds either for denying promotion to Class A or for deregistration at the time the alleged acts were committed. That conduct which was ground only for a nominal monetary fine, or a reprimand, or for minor disciplinary penalty was retroactively made ground not only for denying promotion to Class A but for total deregistration. That all of this was contrary to the rules which had existed at the time of the alleged acts and for a long time thereafter."

The complaint further alleges, in its first cause of action, the exhaustion of all internal remedies available to the respondents, the finality of the decision against them, the fact that simultaneously with their deregistrations the petitioners "undertook to and did register new men, not theretofore employed as longshoremen, as Class "B" longshoremen and did furnish such newly registered Class "B" longshoremen employment on a regular and continuing basis" (Paragraph 26). It is likewise alleged that except for the violation by the union petitioners of their duty as exclusive bargaining representatives and the collaborating misconduct of the employer each of the respondents would have been a fully registered Class "A" longshoremen from on or about June 17, 1963 and would have secured regular and continuous employment in such capacity (Paragraph 28).

The second cause of action alleges that the oral Rules of 1963 governing promotion and deregistration were not applied equally and fairly against the respondents, but were applied arbitrarily and with hostile discrimination

in that other Class "B" longshoremen who failed to meet the alleged new oral standards were not deregistered but, on the contrary, were promoted to Class "A" (Paragraph 38); that the union petitioners failed to fairly represent the respondents by agreeing to the unequal application of the new oral rules and causing or agreeing to the deregistration and denial of promotion to the respondents (Paragraph 38); that the petitioner P.M.A. participated in the denial of the respondents' rights to fair representation in the administration of the collective agreement; and that in doing so and in joining in the unfair and unequal application of the new oral rules by the union petitioners it breached the terms and provisions of the collective agreement (Paragraphs 39-40).

The third cause of action alleges that the petitioners breached the terms of the collective bargaining agreement by not advancing the respondents to Class "A" and by deregistering them from the "B" list. It is specifically alleged:

> "46. That the denial to the plaintiffs of promotion to Class A and their deregistration was in violation of the clear terms of the collective agreement.
>
> "47. That the violation of the clear terms of the collective agreement as aforesaid violated the plaintiffs' individual rights under the collective agreement to continued employment as Class B longshoremen and their promotion to Class A in accordance with the terms and provisions of the then existing collective agreement." (App., p. 77a)

The District Court's jurisdiction to hear this cause of action for the breach of the collective bargaining agreement is provided by Section 301a of the Labor Management Relations Act (29 U.S.C.A., Section 185a) as interpreted by this Court in *Smith* v. *Evening News*, 371 U.S. 195.

The fourth and fifth causes of action charge the individual defendants with conspiring to cause the employer and

the union petitioners to pursue the previously described wrongful course of conduct and prays for punitive damages. The respondents contend that there is pendent federal jurisdiction to hear these causes of action which sound in tort under California State Law.

The Affidavit of Stanley L. Weir

The respondents submitted the affidavit of Stanley L. Weir, one of the deregistered longshoremen. In that affidavit the events giving rise to the Fourth Amended Complaint are set forth in detail together with a large number of exhibits (R. 289-345 and 190-278; App. "A", pp. 1a-54a). Because of the importance of the recital of facts in that affidavit the attention of this Court is especially drawn thereto.

Parenthetically, the Record discloses that on the oral argument in the District Court counsel for the respondents made a formal offer of proof to the effect that he was prepared to show a similar state of facts for each of the respondents even though (because of the pressure of time) an affidavit had been submitted only on behalf of Mr. Weir (Transcript of Hearing, August 16, 1965, pp. 37-38).

Mr. Weir's affidavit relates the events leading up to the deregistrations of June 17, 1963, and sets forth at length the motivations of the petitioners for their discriminatory action.

Mr. Weir commenced his affidavit by stating that:

> "It is my contention that I was de-registered by the Joint Port Labor Relations Committee in violation of the express terms, conditions and provisions of the 1958 Memorandum; that I was not afforded, and the defendants wilfully refused and denied me, the benefit of the provisions therein contained (and, likewise, those contained in the basic collective agreement, the Pacific Coast Longshore Agreement: 1961-

> 1966) respecting procedural due process and equal protection; that in every basic respect I was denied and refused by the union defendants the fair representation to which I am entitled both under the collective agreement and as a matter of law; that the defendant PMA actively participated in that denial and refusal of fair representation by the union defendants; that I am not, in fact guilty of any infraction of the rules which governed my conduct as a Class 'B' longshoreman which I *infer* are charged against me by the Joint Port Labor Relations Committee; that I am only able to *infer* what those charges may be because at no time prior to my de-registration was I furnished with the particulars of the alleged charges against me by the Committee notwithstanding the fact that I made both oral and written demands therefor; that for reasons which will become clear hereinafter I am still not certain precisely what alleged charges there were against me, if any, at the time of my de-registration; that I have been denied equality of treatment with all other Class 'B' longshoremen similarly situated; and that, finally my de-registration was the outcome of hostility, malice and bad faith on the part of the defendants."

Approximately one week prior to February 26, 1963, the Class "B" longshoremen received letters on the stationary of Local No. 10 notifying them that the Local was conducting an investigation of their eligibility for membership in the union and that their presence was required before the union investigating committee on February 26, 1963, at the union office (App. "A", pp. 3a-4a). (It is alleged in Paragraph 15 of the Fourth Amended Complaint that only Class "A" longshoremen were entitled to become members of Local No. 10). Mr. Weir appeared at the meeting and his affidavit sets forth the names of the union officials who were present (App. "A", pp. 4a-5a). He was first told that his record was clear for union membership but a short time later was told that his record was not in fact clear because of "low-man-out" violations

the preceding year; after protesting, he was informed by the chairman of the committee that *the procedural rules were changed as of that evening* and he would *not* be afforded an opportunity of defending himself before the committee; that it would be necessary for him to go, instead, to the record checker's office located at the dispatching hall operated jointly by the petitioners the following morning if he desired to do so (R. 293-294; App. "A", p. 6a).

The following morning at the record checker's office, union officials called in one of their associates who had been "specially" handling Mr. Weir's case; after two accusations of dropping hours (i.e., reporting a lower number of hours worked so as to obtain an earlier dispatch), Mr. Weir showed the union officials, to their satisfaction, that he was in fact guilty of no such violations. He was then informed that he could appear at another meeting of the Investigating Committee (R. 295-296).

Mr. Weir, however, was *not* permitted to appear before the Investigating Committee on March 4, 1963, after arriving as directed (R. 296).

On March 8, 1963, he wrote a letter to the President of Local No. 10, requesting an opportunity to clear himself of any alleged violations (R. 297). *This letter was never answered* (R. 298).

On May 14, 1963, Mr. Weir sent telegrams to the union and employer co-chairmen of the Joint Port "B" Relations Committee, which was then in charge of the matter, requesting to be notified, confronted and tried for any charges against him. *There was no response to these telegrams* (R. 298-299).

On June 10, 1963, Mr. Weir sent letters to the Secretary and Chairman of the Joint Port Labor Relations Committee, representatives of the employer and the union respectively, and a carbon copy to International President Harry Bridges, summarizing his frustrating experiences

in attempting to clear up whatever charge might be pending against him and requesting union membership and A registration (R. 299-302). A copy of this letter was mailed the following day to Mr. Paul St. Sure, President of P.M.A. *Neither this letter nor its copies were answered by the petitioners* (R. 302).

What may euphemistically be called the first response of defendants to the inquiries of Mr Weir was a form letter from the Longshore Labor Relations Committee of San Francisco, dated July 17, 1963, notifying him of his deregistration "for cause as a Class B longshoreman, pursuant to the provisions of #9 of the Memorandum of Rules concerning Registration and De-Registration of Longshoremen in the Port of San Francisco. Such deregistration was based upon the determination of the Committee that you have violated the applicable rules." (R. 302-303). We direct the Court's attention to Section 9 of the 1958 Rules (Exhibit A to Fourth Amended Complaint, R. 126-129) where it is stated that a notice of deregistration is to be by letter in substantially the following form:

> "You are hereby notified that on the day of , 19 , at a regular meeting of the Joining Labor Relations Committee, by unanimous vote, you were de-registered for cause as a Class B longshoreman, pursuant to the provisions of Section 9 of the Memorandum of Rules Concerning Registration and Deregistration of longshoremen in the Port of San Francisco. Such de-registration was based upon the determination of the Committee that you have violated the applicable rules, and *particularly that you have* (*here give particulars*)." (Italics added.)

The form letter notification of deregistration did not state that the action taken was by unanimous vote and is totally void of any particulars of the alleged violations, as required by Section 9. The notice of deregistration further stated:

> "In the event that the Joint Labor Relations Committee receives within (15) days after the date of this letter, a detailed written statement signed by you, *satisfactorily demonstrating that there is no ground for your de-registration*, and requesting a hearing, at which you may show cause, if any you have, why such de-registration should be rescinded" (R. 303). (Italics added.)

We are at a complete loss to understand how a deregistered longshoreman may reasonably be expected to provide a detailed written statement "satisfactorily demonstrating that there are no grounds for his deregistration", when he has never been provided with the specific reasons for his deregistration! Yet this was the procedure followed by the union petitioners (with the active participation of the employers), while presumably acting on behalf of the respondents as their bargaining representatives in administering the collective bargaining agreement.

On June 21, 1963, Mr. Weir wrote to the Joint Port Labor Relations Committee, hereinafter referred to as ("Port Committee") pointing out that the notice of deregistration did not inform him of the offenses he allegedly committed, as required by Section 9. He further requested a hearing and a written, detailed list of charges to enable him to prepare for the hearing (R. 310-311). The Port Committee responded by letter dated August 5, 1963, advising the date of the hearing *but no statement of charges.* Mr. Weir then sent a telegram to the Port Committee on August 7, 1963, once again requesting to be informed of charges against him. The Secretary of the Port Committee (an employer representative) replied by advising, "Your union is your exclusive bargaining representative" (R. 312). Mr. Weir did as instructed by sending a telegram on July 9, 1963, to the President of Local No. 10 requesting a statement of charges in order to prepare his defense. *He received no response* (R. 312-313).

On July 11, 1963, Mr. Weir appeared before the Port Committee. As the session opened he was told:

(i) He would not be permitted to have counsel;

(ii) He would not be permitted to produce witnesses on his own behalf;

(iii) He would not be told the exact nature of the cause of deregistration, but only the general nature of the violation; and

(iv) If he wanted to ascertain the exact nature of the charges, it would be necessary for him to appear entirely unaccompanied at the records office of the Port Committee in one week (R. 312).

At the "hearing" before the Port Committee, the union representatives made no offer to represent him or to urge the Port Committee to be specific about the reasons for the deregistrations, or to be of any assistance whatsoever. The union representatives, exclusive bargaining representatives of plaintiffs, were the prosecutors, rather than the defenders of Mr. Weir (R. 318). Although not permitted to have counsel, two P.M.A. attorneys were present and provided counsel to the Secretary of the Port Committee (R. 318).

Mr. Weir stated to the Port Committee that his only possible violation as uncovered by the record checker hired by the union was for two and one-half hours of low-man-out (below the permissible limits under the oral 1963 Rules) which he, in any event, denied. The President of Local No. 10 interrupted to read a special investigation report on Mr. Weir and confirmed the truth of his statements (R. 315). At the conclusion of his appearance before the Port Committee, one of the employer's representatives, Mr. Holtgrave, said "Are you claiming discrimination by this Committee? Because if you are, the rules say that you can take an appeal within ten days

from today. Do you want to do that?" (R. 315). Mr. Weir responded, "How can I appeal within ten days from today from a decision which you tell me you will not reach for another two weeks?" Mr. Holtgrave did not reply (R. 316). It should be noted that at no time during the course of this "hearing" did the Port Committee specify the nature of the alleged violations justifying deregistration.

On July 17, 1963, Mr. Weir again appeared at the record checker's office and this time (30 days after being deregistered) was accused of 22½ hours of low-man-out violations. He brought along his own records (each longshoreman carries his individual time book) which contradicted the records of the Port Committee. The officials of the Port Committee refused to look at Mr. Weir's records and refused to produce the sign-in sheets (the original, detailed daily records from which the summary record is made) for his inspection (R. 316).

On July 18, 1963, Mr. Weir wrote to the Secretary and Chairman of the Port Committee requesting a hearing to determine the validity of these now disclosed charges. He also protested the fact that the records of men who were registered (in Class A) were checked for only a four-week period while his records were checked for at least sixteen weeks (R. 317-318). On July 23, 1963, the Port Committee reaffirmed the deregistration, without specifying the reason for its decision (R. 319). On July 27, 1965, Mr. Weir wrote a letter to the Port Committee appealing his deregistration (R. 319-320).

Pursuant to Section 17.261 of the collective bargaining agreement, the appeal (if the decision of the Port Committee to deregister plaintiffs is in fact appealable) should have been referred immediately to the Joint Coast Labor Relations Committee, the next step in the grievance procedure. During the eight-and-three-quarter months following the filing of the appeal, Mr. Weir tried to ascertain

if and when the committee and the petitioners intended to act on the appeals of the deregistered men and was informed that the matter was closed, that the decision of July 23, 1963 was final (R. 32). After waiting eight-and-three-quarter months respondents commenced this action on April 14, 1964. In December, 1964, eight months after this litigation was commenced, the Coast Labor Relations Committee affirmed the deregistrations.

The foregoing recital is without substantial contradiction in the Record. The references to contrary "facts" in the brief of the petitioners are not to affidavits made upon knowledge, as the Court of Appeals observed (Pet. Br., App., pp. 19-20), but to a series of self-serving documents prepared by the petitioners in connection with the purported decision of the Joint Coast Labor Relations Committee some sixteen months after an appeal had been taken to it and some eight months after this litigation had been commenced. Moreover, it was a decision made *ex parte*. There was no adversary hearing.

Absolutely without contradiction in the record, however, is the lengthy and detailed recital in the Weir affidavit of the hostility, the discriminations, the arbitrary and invidious distinctions, the malice and the bad faith, and, equally important, the explicit motivations for that course of conduct. It is a recital replete with specific references to time, date, place and incident. Its length precludes convenient summarization here. The attention of the Court is, therefore, earnestly solicited to its examination (App. A, pp. 41a-52a). Suffice it only to note here that that hostility stemmed from the condemnation by the respondents (and others among the "B" men) respecting the unfairness of their treatment by the bureaucracies of both the union and employer petitioners. More specifically the opposition of the "B" men was predicated upon the refusal of P.M.A. and the Union to advance them to the "A" category, combined with the payment of $29,000,000

by P.M.A. into a fund whose only beneficiaries would be the Class "A" longshoremen who are registered as such on or prior to August 10, 1959 (R. 339-341). Significantly, the main consideration for this $29,000,000 payment was the deprivation in the collective bargaining agreement of all of the protective devices and provisions which inured to the benefit of the "B" men. In short, the "B" men were deprived of the benefit of all beneficial "work rules" and the command of the employer—however arbitrary it might be—became the standard operating rule.

We direct attention to certain other facts in this connection. In 1960, after much dissatisfaction, openly and continuously expressed by the "B" men, the Union permitted the "B" men to elect three of their number as representatives to the Union Executive Committee. Their position was to be that of observers who might be permitted, at times and only by specific invitation, to speak for the interests of the "B" men. After these representatives were elected (among them the respondent Weir), they were permitted to attend a few sessions of the Executive Committee but met with outright hostility there. They were not permitted to present the interests of the "B" men. One Union official told the "B" representatives that they were being watched continuously and would be de-registered at the very first opportunity that presented itself. Shortly thereafter, two of the "B" representatives were actually deregistered on one pretext or another. Another Union official told the respondent Weir, "If they don't get you one way, they will another" (R. 341-342). Mr. Weir was also advised in the office of the President of Local #10, that ". . . it wasn't smart . . ." of Weir to distribute on the waterfront, amongst the longshoremen, a magazine article critical of the P.M.A.—I.L.W.U. contract and the exploitation of the "B" men thereunder (R. 342).

The unequal treatment of the "B" men by the petitioners as compared to the "A" men is graphically illu-

strated by a series of Local #10 Longshore Bulletins which are discussed in the Weir affidavit (R. 56-57) and which were submitted as Exhibits I-1 through I-5 (R. 273-278). These Union documents show that no Class "A" longshoremen or Union member was ever de-registered for violations of existing rules which were all far more serious than those charged against the respondents. We invite this Court's comparison of the work records of the "A" men, as disclosed by the exhibits, and the purported work records of the respondents as claimed by the petitioners (R. 91-P-91-S).

Numerous other exhibits extremely pertinent to this litigation were annexed to the Weir affidavit (R. 190-287). We shall refer to these exhibits only briefly in order to show how their relevant portions apply to the instant controversy.

Exhibit A (R. 191-194). These are the low-man-out rules dated May 27, 1959. Paragraph 17 of these rules provides:

> "Checks will be made each week and violators will receive the following penalties:
>
> First offense—30 days off
>
> Second offense—6 months off
>
> Third offense—Cancellation of Registration." (R. 194).

There is no provision in these rules (or in any other set of rules or regulations contained in the Record or otherwise) which would authorize the deregistration of a longshoreman for a first offense.

Exhibit C (R. 197-213). This is the decision of Donald Gibson, Referee for the California Unemployment Insurance Appeals Board, entitled, "In the Matter of James V. Carter, et al., Claimants, Pacific Mutual Association, Employer". This decision, on claims by many of the respond-

ents for unemployment compensation following their deregistrations, was reached after considering a transcript of nearly 1,700 pages of testimony, including several hundred pages of testimony by representatives of petitioners (R. 322). The factual positions of the "B" men was upheld in every respect. The Referee's opinion discussed the low-man-out rules (Exhibit A to the Weir Affidavit), and it appears from this discussion that the low-man-out rules dated May 27, 1959 were still in full force and effect at the time of the deregistration (R. 204-205). The Referee's opinion also set out what appears to be a copy of minutes of a meeting of the Longshore Labor Relations Committee on July 16, 1963 (subsequent to the deregistrations of June 17, 1963) containing the following:

> "The union submitted the following relative to the registration and deregistration of Class B Longshoremen. 1. That all B men who are on appeal and who have not been promoted solely because of low-man-out violations shall be given *30 days off as per contract* and promoted to A registration." (R. 205) (Emphasis added.)

From this portion of the record, we may conclude that as of July 16, 1963, the union representatives on the Port Committee, acting pursuant to instructions of their membership (*the only persons who could be injured by the violations*), voiced the opinion of their union membership that the only penalty provided in the contract for violators of the low-man-out rules was a thirty day suspension from work. This would be in accord with Paragraph 17 of the low-man-out rules dated May 27, 1959. There was no provision permitting deregistration.

The Referee found that all respondents (at least those concerned with that unemployment proceeding), although delinquent at times with their pro-rata payments for the cost of the hiring hall, were all current as of the date consideration was given to them for reclassification as

Class A Longshoremen; that some errors in low-man-out were because of a rule adopted by the dispatcher (an agent of the petitioners) in connection with Sunday work; and because of the genuine lack of knowledge and understanding of the very complex rules and the resulting confusion in the minds of respondents as to the proper hours to be used (R. 209). As for those respondents charged with lack of availability for work, in each instance, the Referee found that the penalty imposed had been served (R. 209).

We conclude our discussion of this exhibit by referring the Court to the observations of the Referee that ". . . it is inherently impossible to believe that the claimants herein (respondents) could logically have been expected to anticipate that their acts would result in the loss of their employment . . . the claimants did not embark on a course of action which they knew or should have known would result in the loss of their employment. As a matter of fact, over the years a pattern of behavior was established *which was condoned and allowed by the employer, the union and the Joint Port Labor Relations Committee* . . . again, emphasis must be placed upon the fact that violations in respect to the working rules or in respect to availability were considered at the time of occurrence and penalties were assessed. These penalties being satisfied, the individuals were continued as Class B Longshoremen and were dispatched to employment as it arose." (R. 210).

Following oral argument of the motions to dismiss, respondents' counsel forwarded to the District Court a copy of a portion of the transcript of the hearings before the California Unemployment Insurance Appeals Board (App. "B" pp. 55a-64a). Respondents pointed out testimony by a P.M.A. official to the effect that the purported 1963 rules under which respondents were deregistered, were not in written form, nor in a single set of minutes (R. 459). "These

matters were discussed orally'' (R. 461). The P.M.A. official did not know if the oral discussion was ever reduced to writing (R. 461). Moreover, the various documents submitted to the Court by petitioners *did not contain a single purported copy* of the rules or standards which respondents allegedly violated. We submit that the absence of an adequate explanation for this omission was reason in and of itself for denying petitioners' motions for summary judgment. If, as respondents seem to have established, these standards never in fact existed, the deregistrations of respondents constitute, unequestionably, one of the most arbitrary abuses of power ever exercised by a statutory bargaining agent in collusion with the employer.

Exhibit F (R. 230-263) is the Decision of the Trial Examiner of the National Labor Relations Board. This decision, rendered May 4, 1965, concerned charges of unfair labor practices brought against petitioners I.L.W.U., Local No. 10 and P.M.A. by five Class B longshoremen who were deregistered at the same time as the respondents. The charging parties in the N.L.R.B. proceeding alleged that their deregistrations by petitioners, for late payment of their pro-rata share of the cost of operating the dispatch hall, were in violation of Sections 8(b)(1)(A) and 8(a)(1) of the Labor Management Relations Act, 29 U.S.C.A. Sections 151 *et seq.* After a hearing where all parties were afforded a full opportunity to be heard, examine, and cross-examine witnesses, adduce evidence, file briefs and submit oral argument, the Trial Examiner made findings of fact and concluded that petitioners had committed unfair labor practices. Reinstatement with back pay was recommended (R. 260-263). The Trial Examiner relied upon *Miranda Fuel Co. Inc.,* 140 N.L.R.B. 181, enforcement denied *sub nom. N.L.R.B.* v. *Miranda Fuel Co., Inc.,* 326 F.2d 172 (2d Cir. 1963), where the National Labor Relations Board applied the doctrine of *Steele* v. *Louisville & Nashville R. Co.,* 323

U.S. 192 (1944) to Board proceedings for unfair labor practices.

The Trial Examiner's Decision was reversed by the National Labor Relations Board, *Pacific Maritime Association and International Longshoremen's and Warehousemen's Union, Local No. 10 (Johnson Lee),* 115 N.L.R.B. No. 117 (1965). The Board decided that the acts of defendants did not constitute unfair labor practices, although the opinion of the Board did not discuss the applicability of the *Miranda* case.

This exhibit was submitted to the District Court by the respondents to demonstrate the evaluation of the deregistration proceedings by a second, independent tribunal (the California Unemployment Insurance Appeals Board, Exhibits C and D, *supra*, was the other tribunal whose evaluation of this evidence was submitted by respondent Weir). Both of these tribunals, after extensive evidentiary hearings, found in favor of the deregistered Class B longshoremen on substantially all of the factual issues litigated. The significance of those factual findings differed in each case because of the policy of the specific legislation which was involved, of course, but there is no escaping the obvious and compelling conclusion that the referee's decisions in the unemployment compensation proceedings (Exhibits C and D) and the Trial Examiner's Decision (Exhibit F) corroborate, almost completely, the statements contained in the Weir affidavit and the respondents' offer of proof. The corroboration supplied by the Trial Examiner's Decision was that particulars of the cause for deregistration were not provided and the deregistered men had not been informed of the 1963 oral Rules at any time prior to their deregistration, or of any proposed ground for the action taken against them (R. 237). The Port Committee had not informed any of the men of the "cause" of deregistration at any time prior to the hearing, nor did Local No. 10 take the initia-

tive to inform them of the basis for the deregistration (R. 239). The P.M.A. representative on the Port Committee who testified before the Trial Examiner was, "notably lacking in detail" as to the reasons provided to the deregistered men (R. 240). Error in the records of the Port Committee (R. 242) was noted by the Examiner, as was the failure of the notice of July 23, 1963, reaffirming the deregistrations, to provide a specific reason for the deregistrations (R. 242) and the different treatment afforded to Class A longshoremen by Local No. 10 for the late payment of pro rata from that afforded to Class B, different treatment not depending upon any relevant or reasonable distinction (R. 246-247). Thus the Trial Examiner observed that while Class B men were deregistered for late payments ranging from $62 to $80 (none of which was in arrears at the time of deregistration), there were about a dozen members of Local No. 10 (all Class A) each of whom owed substantially more of their pro-rata shares, some owing hundreds of dollars and one, listed as in "jail" being indebted for $1,014 (R. 245-246). The Trial Examiner observed that, "There is no claim by Respondents that any Local 10 member or Class A registrant had ever been deregistered by the Port Committee for . . . pro rata shares." (R. 246, fn. 26).

The N.L.R.B. proceedings are germane here because the petitioners urged the proposition on the court below and in the District Court that the respondents' remedy, if any, was to file unfair labor practice charges with the Board. On May 17, 1965, in the interim between the Trial Examiner's Decision and the reversal thereof by the N.L.R.B., most of the respondents in this action filed unfair labor practice charges against the petitioners (R. 128, 129). On June 21, 1965, the Acting Regional Director of the Board in San Francisco refused to issue a complaint by reason of the expiration of the six-month statute of limitations under Section 10 (b) of the Act (R. 180 B). The

decision of the Acting Regional Director refusing to issue a complaint was affirmed by the General Counsel of the Board in Washington, D.C. on September 24, 1965 (R..499).

In any event, in view of the N.L.R.B. decision in the case of *Johnson Lee, supra,* it is doubtful if the conduct alleged in this litigation comes within the definition of an unfair labor practice over which the N.L.R.B. is willing to take cognizance.

With Respect to the Exhaustion of Internal Remedies

In the courts below the petitioners argued that the respondents had no standing to maintain this litigation because they had failed to exhaust the internal remedies—the grievance machinery—available to them. In this Court the petitioners take a new tack and the thrust of their argument now is that the respondents seek to make a collateral attack on the final decision of the Joint Coast Labor Relations Committee * without first establishing that the union petitioners were guilty of a breach of their statutory duty of fair representation in connection with the operation of the grievance procedures. Neither contention has any merit whatsoever. There are several conclusive answers to those contentions. Those answers are both factual and legal.

The first is predicated on the explicit language of the collective agreement which does not give the respondents the right to appeal to the Coast Arbitrator. The collective agreement makes the decision of the Joint Labor Relations Committee the final step in the grievance machinery available to the respondents. Section 17.261 of the collective agreement provides:

---

* A decision, it will be recalled, that was not rendered until more than eight months after this litigation was commenced and not until about seventeen months after the appeal had been first taken.

"17.261 Any decision of a Joint Port or Joint Area Labor Relations Committee or of an Area Arbitrator claimed by either party to conflict with this Agreement shall immediately be referred at the request of such party to the Joint Coast Labor Relations Committee (and, if the Joint Coast Labor Relations Committee *cannot agree,* to the Coast Arbitrator for review). The Joint Coast Labor Relations Committee, and if it *cannot agree,* the Coast Arbitrator, shall have the power and duty to set aside any such decision found to conflict with this Agreement and to finally and conclusively determine the dispute. It shall be the duty of the moving party in any case brought before the Coast Arbitrator under the provisions of this 17.261 to make a prima facie showing that the decision in question conflicts with this Agreement, and the Coast Arbitrator shall pass upon any objection to the sufficiency of such showing before ruling on the merits." (Italics added)

Two comments may be made with respect to this quoted paragraph of the collective agreement. (1) The petitioners stressed throughout all of their papers submitted to the District Court that the Joint Coast Labor Relations Committee agreed and found against the respondents on November 20, 1964. The condition, therefore, which permits an appeal to the Coast Arbitrator, namely a failure of the Coast Labor Relations Committee to agree, does not exist. (2) Even if an appeal were permitted pursuant to this Section to the Coast Arbitrator, none of the respondents would be entitled to take it because, according to the quoted section, such appeal must be at the request of a "party" and the agreement, in its second preamble paragraph (page 1), makes clear that an aggrieved person is not a party and that the only parties are I.L.W.U. and PMA. Only parties may select the arbitrator, Section 17.51. Specifically, the collective agreement says:

"The parties hereto are the International of the International Longshoremen's and Warehousemen's

Union and the coastwide Pacific Maritime Association."

The only time an aggrieved person has the right under the collective agreement of appealing from the decision of the Joint Coast Labor Relations Committee to the Coast Arbitrator is when his complaint is one that falls within the terms of Section 13.1 of the collective agreement and which reads as follows:

> "There shall be no discrimination in connection with any action subject to the terms of this Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin or religious or political beliefs."

But the complaint of these respondents does not fall within the ambit of the quoted section of the collective agreement. Their complaint of unfair representation does not fall within it. Their complaint of discrimination does not fall within it. Each of the respondents wrote a letter of appeal on or about July 27, 1963, of which the following is a sample:

"July 27, 1963

R.R. Holtgrave, Secretary
James Kearny, Chairman
JLRC (PMA-ILWU)
16 California Street
San Francisco, California

Dear Sirs:

Your committee de-registered me on June 17. On July 24, I received your letter denying my hearing appeal. In so doing you consummated an action that is discriminatory. You have not judged all the men involved by the same standards.

I appeal your decision and request another hearing as stipulated, where I will prove and document this discrimination.

I have never been able to get from you an official statement specifying the alleged charges against me, nor did your committee produce documents to substantiate the charges.

Would you please correct this situation for the next hearing.

Sincerely,"

The fact that the petitioners *for the first time, long after this litigation was first commenced,* for their own ulterior purposes, designated the complaints of the respondents as being complaints of discrimination falling within the ambit of Section 13.1, does not make them such. The complaints of these respondents are governed by the second sentence of Section 17.2 which reads as follows:

"17.2 Grievances arising on the job shall be processed in accordance with the procedure hereof beginning with 17.21. Other grievances as to which there are no specific provisions herein shall be processed in accordance with the provisions hereof beginning with 17.23."

Section 17.261 which was quoted *supra,* is the culminating section which commences with Section 17.23. For the information of this Court those intermediate sections read as follows:

"17.23 If the grievance is not settled in 17.21 and 17.22 or does not arise on the job, it shall be referred to the Joint Port Labor Relations Committee which shall have the power and duty to investigate and adjudicate it.

"17.24 In the event that the Employer and Union members of any Joint Port Labor Relations Committee *shall fail to agree upon any question before it,* such question shall be immediately referred at the request of either party to the appropriate Joint Area Labor Relations Committee for decision.

"17.25 In the event that the Employer and Union members of any Joint Area Labor Relations Committee *fail to agree on any question before it,* such question shall be immediately referred at the request of either party to the Area Arbitrator for hearing and decision, and the decision of the Area Arbitrator shall be final and conclusive except as otherwise provided in 17.26. (Emphasis added.)

"17.26 The Joint Coast Labor Relations Committee has jurisdiction to consider issues that are presented to it in accordance with this Agreement and shall exercise such jurisdiction where it is mandatory and may exercise it where such jurisdiction is discretionary as provided in 17.261, 17.262 and other provisions of this Agreement."

There is, consequently, no basis for the claim on the part of the petitioners that the respondents failed to exhaust their internal remedies by failing to appeal to the Coast Arbitrator.

The second conclusive answer to the petitioners' contention is that, in point of fact, they have been denied access to the grievance machinery provided and, consequently, as a matter of law, they not only have a good and meritorious cause of action for breach of the collective agreement on this very ground but, moveover, they were under no duty or obligation to pursue the internal grievance machinery beyond that point at which their access to it has been denied to them by the total inaction of the petitioners. It may be added that when consideration is given to the entire underlying factual pattern which discloses not only that the respondents were effectively denied access to the grievance machinery by the complete inaction and disregard of their appeal, but likewise also in the prior "hearings" in which all the fundamental criteria of procedural fairness were absent or refused, the conclusion becomes inescapable that such denial, that such inaction, was in bad faith, that it was but another aspect of the

entire pattern of hostile discrimination by the petitioners toward the respondents.

The factual background which serves to support these statements has been set forth at length in the affidavit of Stanley L. Weir, one of the respondents in this action, and will not be repeated here. Suffice it to note, however, that on July 27, 1963, each of the respondents appealed the deregistration decision of June 17, 1963, and the affirmance of that deregistration on July 23, 1963. They each did so by identical letters, a copy of one of which has been reproduced *supra*. There was no response of any kind from the petitioners or from the Joint Labor Relations Committee to these appeals. Although repeated attempts were made by the respondents to learn the status of their appeals, none of them were able to obtain any information whatsoever. In fact, as the accompanying Weir affidavit makes clear, they were informed that the decision was final and that they had no right of further appeal. This information may well have been correct as reference to Section 17.24 of the collective agreement seems to indicate. Be that as it may, the respondents attempted to obtain action on their appeals of July 27, 1963, and they waited nearly nine months with that hope until on April 14, 1964, they finally instituted this action. The entire period between the time the respondents filed their appeals on July 27, 1963, until the commencement of this action was marked by the refusal of these petitioners, through their instrumentality, the Joint Labor Relations Committee, to take any action whatsoever on the pending appeals. These facts, we respectfully submit, leave no other conclusion possible than that the petitioners, by failing and refusing to process the appeals of the respondents have effectively denied to the respondents access to the internal grievance machinery.

In *Born* v. *Cease*, 101 F. Supp. 473, 475, the Court aptly held:

> "... the proceedings governing appeals within labor unions ... should be 'plain, speedy and adequate'. The plaintiff had no appeal within the union in the true sense of the word ..."

Certainly there was nothing "plain, speedy and adequate" about the internal grievance procedures here involved. And adequacy along with promptness are the key factors to be considered. In the leading case recently decided by this Court, *Republic Steel Corporation* v. *Maddox,* 379 U.S. 650, 85 S.Ct. 614, 13 L.Ed. 2d 580, these considerations form the crux of the ruling. In that case, the plaintiff made no effort whatsoever to utilize the grievance machinery provided and Mr. Justice Harlan writing for the Court therefore reversed an Alabama State Court judgment in his favor. In the course of doing so, Mr. Justice Harlan said:

> "As a general rule in cases to which federal law applies, federal labor policy requires that individual employees wishing to assert contract grievances must *attempt* use of the contract grievance procedure agreed upon by employer and union as the mode of redress. If the union refuses to press or only perfunctorily presses the individual's claim, differences may arise as to the forms of redress then available. See Humphrey v. Moore, 375 U.S. 335, 84 S.Ct. 363, 11 L.Ed. 2d 370; National Labor Relations Board v. Miranda Fuel Co., 2 Cir. 326 F. 2d 172. But unless the contract provides otherwise, there can be no doubt that the employee must afford the union the opportunity to act on his behalf." (85 S.Ct. at 616; emphasis in original.)

Moreover, this Court added:

> "And it cannot be said in the normal situation, that contract grievance procedures are inadequtae to protect the interests of an aggrieved employee until the employee has attempted to implement the procedures and found them so."

We submit that in the instant case there can be no doubt that the respondents did attempt to use the contract grievance procedure, that the union not only refused to assist them but, in fact, acted as their prosecutors and that the respondents found those procedures inadequate to protect their interests after a strenuous attempt to implement them. *Republic Steel Corporation* v. *Maddox,* therefore, entirely and unequivocally supports the position of the instant respondents. A host of other authorities equally sustain the position of the respondents.

In *Booth* v. *Security Mutual,* 155 F. Supp. 755, 762, it was held:

> "... defendants raise the objection that the union constitution and by-laws present channels through which the plaintiffs must first seek to obtain their rights before resort to the courts. To this it need only be said that two years of inaction by the union and its high officials in taking any steps against those primarily responsible . . . make it apparent that any such intra-union remedy is presently without avail. Doubtless, it is for that very reason that the plaintiffs have filed the present suits."

In *Flaherty* v. *McDonald,* 178 F. Supp. 544, which was an action by officers of a local union demanding that control of the local be returned to its elected officers by the International Union, the Court held:

> "As a general rule one of the contracting parties cannot ignore portions of a contract and yet insist the other party live up to its terms. The contract is binding on all parties or on none. In this particular case, International disregarded its contractual obligation relative to charges and trials of Local officers. It appears to the Court that International is in poor grace when it insists that it can disregard that portion of the Constitution relative to charges and trials and yet insist that those who have been deposed by International's action, contrary to its own Constitution, will have to take an appeal in

> compliance with the terms of the Constitution before having recourse to the courts. '. . . he who demands the protection of the constitution should in the first instance give that protection.' Underwood v. Maloney, D.C., 152 F. Supp. 648 at page 667." 178 F. Supp. at 550.

The opinion in *Flaherty* v. *McDonald* emphasized further:

> "Time is of the essence in this matter. . . . If plaintiffs are to have any relief at all from the administrative remedies, that relief must be prompt." 178 F. Supp. at 550.

Moreover, this Court made clear in *Textile Workers Union* v. *Lincoln Mills of Alabama*, 353 U.S. 448, that it is the duty of the federal Courts to fashion a body of substantive federal law from "the penumbra of express statutory mandates" and that "the substantive law to apply in suits under Section 301(a) is federal law, which the courts must fashion from the policy of our national labor laws". In this connection our national labor laws do give more than an indication of what Congress deems a reasonable period of time beyond which it is improper to require the exhaustion of internal remedies. The Labor Management Reporting and Disclosure Act of 1959 provides (29 U.S.C., Sec. 411(a) (4) that, "any such member may be required to exhaust reasonable hearing procedures (but not to exceed *a four-month lapse of time*) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof." (Emphasis added.)

Certainly the eight and three-quarter month period of deliberate inaction on the part of these petitioners before the commencement of this litigation is unreasonable and when considered in connection with the entire course of conduct of the petitioners prior thereto, denying as it did every semblance of fairness in the operation of the

grievance machinery must be deemed an absolute denial of access to the internal grievance machinery provided.

In the leading case of *Detroy* v. *American Guild of Variety Artists,* 286 F. 2d 75 (2nd Cir. 1961) *cert. den.,* 366 U.S. 929, the Court in dealing with the four-month exhaustion period provided under Section 101 of Landrum-Griffith pointed out in language applicable here that:

> ". . . the proviso dictated an outside limit beyond which the judiciary cannot extend the requirement of exhaustion—no remedy which would require proceedings exceeding four months in duration may be demanded. We, therefore, construe the statute to mean that a member of a labor union who attempts to instutute proceedings before a court or an administrative agency may be required *by that court or agency* to exhaust internal remedies of less than four months' duration before invoking outside assistance." 286 F 2d at 78. (Emphasis in original.)

The opinion then continues:

> "Section 102, under which the appellant instituted his proceeding, provides for enforcement by federal courts of rights assured by federal law. We are not in this case, therefore, bound by the doctrine of exhaustion as developed in the New York, Nevada, or California courts with respect to suits against unions brought in the courts of those states by union members. In enforcing rights guaranteed by the new statute, whether or not similar rights would be enforced under state law by state courts, the federal courts may develop their own principles regarding the time when a union's action taken in violation of Sec. 101 is ripe for judicial intervention. Cf. Holmberg v. Armbrecht, 1946, 327 U.S. 392, 66 S. Ct. 582, 90 L. Ed. 743; Sola Electric Co. v. Jefferson Electric Co., 1942, 317 U.S. 173, 176-177, 63 S. Ct. 172, 87 L. Ed. 165. The rules formulated by various state courts may suggest helpful avenues of approach, cf. Textile Workers Union of America v. Lincoln Mills, 1957, 353 U.S. 448, 457, 77 S. Ct. 912,

> 1 L. Ed. 2d 972, but the authority granted to the federal courts by Congress to secure the rights enumerated by Sec. 101 of the 1959 Act is accompanied by the duty to formulate federal law regarding a union member's obligation to exhaust the internal union remedies before seeking judical vindication of those rights."

Moreover, said the Circuit Court in the *Detroy* case:

> "If we look to the substantial body of state law on the subject, we find that the general rule requiring exhaustion before resort to a court has been almost entirely swallowed by exceptions phrased in broad terms. . . .
>
> "The Congressional approved policy of first permitting unions to correct their own wrongs is rooted in the desire to stimulate labor organizations to take the initiative and independently establish honest and democratic procedures. . . . Other policies, as well, underlie the exhaustion rule. The possibility that corrective action within the union will render a member's complaint moot suggests that, in the interest of conserving judicial resources, no court step in before the union is given its opportunity. . . . See Summers, The Law of Union Discipline: What the Courts Do in Fact, 70 Yale L.J. 175, 207 (1960). Congress has provided a safeguard against abuse by a union of the freedom thus granted it by not requiring exhaustion of union remedies if the procedures will exceed four months in duration. But in any case, if the state of facts is such that immediate judicial relief is warranted Congress' acceptance of the exhaustion doctrine as applied to the generality of cases should not bar an appropriate remedy in proper circumstances."

We have shown the manifest improperties in the proceedings involving the deregistration of these respondents even long prior to the taking of their appeal on July 27, 1963. We have shown that the "hearings" granted them were largely a farce, that they were not furnished with

statement of the charges against them, that they were asked to defend themselves without being given the particulars upon which they could formulate a defense, and that they were denied not only counsel but any assistance including representation by their ostensible bargaining representative, the union petitioners. These facts, by their very recitation, reveal such a violation of their rights as makes inapplicable any requirement that they further exhaust internal remedies since, at every stage up to the time they took their abortive appeal, the evidence demonstrates the violation of their rights under the collective agreement *and the predetermination in the minds of those who would, under the internal remedies provided, pass upon the appeal.*

The remark in Summers, Union Powers and Workers' Rights, 49 Mich. L. Rev. 805, 820 (1951), is apposite in this connection:

> "The rights which a worker should have in the union which acts as his economic government are essentially the rights of a citizen in a democratic state. . . . Most important is the right to participate fully and freely in making the laws under which he lives. *If this right of an individual worker within his union is not protected, then collective bargaining has not brought him freedom but an additional master.*"

In *Nelson* v. *Johnson*, 212 F. Supp. 233, which was a case brought by union members against the president and treasurer of a local union under Landrum-Griffin alleging that the defendants violated the act in failing to hold money and property solely for the benefit of the union and expend it in accordance with the union's constitution, by-laws and resolutions. The Court said at page 255:

> "Can the national governing body of a union discourage resort to the federal courts when internal redress for patent federal wrongs has proven futile in the past? The answer is no."

In *Parks* v. *International Brotherhood of Electrical Workers*, 314 F. 2d 886 (4th Cir., 1963) *cert. den.*, 83 S.Ct. 1111, it was said at pages 924-925:

> "Although there is a common law doctrine that parties are not entitled to judicial relief until they have exhausted intra-union remedies, there are a number of well-recognized exceptions. . . . Exceptions are recognized when resort to the internal appeal would be unreasonably burdensome because of delay likely to result in irreparable injury."

The Court in the *Parks* case stated further, at page 925, that:

> ". . . section 101 (a) (4) . . . provides an authoratative expression of Congressional labor policy, it is, insofar as it may modify the common law exhaustion doctrine, a prime source upon which the court should draw in formulating the federal law. . . ."

It, thereafter, added at page 925:

> "The four-month limitation in the proviso has been subjected to various interpretations. We agree, however, with the District Court's conclusion that 'whatever construction is placed' on this proviso (203 F. Supp. at 296), these suits are barred neither by the statutory limitation nor by common law exhaustion doctrine. When these suits were brought, all internal remedies, available within four months of revocation, had been exhausted. To insist upon full exhaustion of remedies would be to impose an unreasonable delay in the adjudication of plaintiffs' rights and would result in irreparable harm to plaintiffs."

In *Gainey* v. *Brotherhood of Railway & Steamship Clerks*, 313 F. 2d 318 (1963), the Court said at page 322:

> "The use of the word 'decision' would indicate that the Grand President must dispose of the issue before an aggrieved member could go on to the Council. There is nothing in the Brotherhood governing laws

which gives the plaintiffs a right to appeal from the inaction of the Grand President: on the contrary, the entire appellate procedure is predicated on the existence of a decision at each stage. In view of the fact that plaintiffs were effectively stopped from obtaining a final union disposition of their grievance and having very much in mind the time element involved we find that the allegations in their complaint make an adequate representation that they have taken all reasonable steps available to them within the Brotherhood's internal structure."

In a case where the administrators of an estate alleged that decedent was unlawfully discharged by his employers with the knowledge, consent and connivance of the union and deprived of certain benefits in violation of the collective bargaining agreement, the Second Circuit held with regard to the arbitration provisions of the contract:

"It is true that the collective bargaining agreements contain arbitration clauses and that if this were simply a suit for wrongful discharge, the arbitration clauses would be available to the employers as a defense. (citations) *But where the employee's case is based upon a conspiracy between his union and his employer to deprive him of his rights, he cannot be forced to submit that issue to an arbitration between the employer and the union.* Such a procedure would fail completely to settle the issues between the union member and his union. It would entrust representation of the employee to the very union which he claims refused him fair representation, and it would present as adversaries in the arbitration procedure the two parties who, the employee claims, are joined in a conspiracy to defraud him.

"That (District) Judge Bryan had misgivings along the lines we have indicated is evidenced by his having included in his order (staying the action pending arbitration) provision for the plaintiffs to have separate representation at the arbitration and a voice in choosing the arbitrator. However, the arrangement fails to cure the defects, since the plaintiffs

would still be aligned on the side of their adversary, the union, or, if not, the order would have to be construed as forcing the plaintiffs to arbitrate issues with employer and union which neither they nor their decedent ever agreed to arbitrate." *Hiller* v. *Liquor Salesmen's Union Local No. 2*, 338 F. 2d 778, 779-780 (2nd Cir. 1964). (Emphasis added.)

Finally in *Samsing* v. *S & P Company*, 325 F. 2d 718 (1963), the Court of Appeals for the Ninth Circuit in a Per Curiam opinion held:

"Appellant brought suit under Section 301 of the Labor-Management Relations Act, 1947 (29 U.S. C.A. Sec. 185(a) to recover wages and other benefits allegedly due under a collective bargaining agreement. The District Court dismissed the complaint on the ground that it appeared from the complaint and attached agreement that the appellant had not exhausted his administrative remedies.

"The collective bargaining agreement simply set out the administrative procedures to be followed in settling grievances. The complaint alleged that 'plaintiff has exhausted all of the administrative remedies provided for in said labor agreement or he has attempted to so comply.' Appellee asserts that this allegation is to be ignored as 'a mere conclusion, wholly uninformative as to what he claimed to have done to comply or attempt to comply.' We think it was sufficient to withstand a motion to dismiss, for 'the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim.' Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 102-103, 2 L.Ed. 2d 80 (1957)."

The first two counts allege valid causes of action upon which relief may be granted under that line of cases in this Court commencing with *Steele* v. *Louisville & Nashville R.R. Co.*, 323 U.S. 192 (1944) and ending with *Vaca* v. *Sipes*, 386 U.S. 171 (1967)

The allegations in the first two counts and the relief sought by the respondents are similar to those of the petitioners in *Steele* v. *Louisville & Nashville R. R. Co.*, 323 U.S. 192 (1944) whose holding was recently reaffirmed by this Court in *Vaca* v. *Sipes*, 386 U.S. 171 (1967). *Steele* was the first in a long line of decisions clearly providing that individual members of a bargaining unit have a cause of action against their exlusive statutory bargaining agent for breach of the latter's duty to represent all members of the bargaining unit fairly and without invidious and hostile discrimination. Because of the impact of *Steele* on subsequent decisions and its bearing here, we cite at length from the opinion.

Steele concerned an action in a state court brought by Negro firemen employed by the defendant railroad. The defendant Brotherhood of Locomotive Firemen and Enginemen, a labor organization, was the exclusive bargaining representative of the craft of firemen employed by the railroad as provided under § 2, Fourth, of the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.* The majority of the firemen employed by the railroad were white and were members of the Brotherhood, while a substantial minority were Negroes who were excluded from membership.

The plaintiffs alleged that the Brotherhood, purporting to act as the representative of the entire craft of firemen, without informing the plaintiffs or giving them opportunity to be heard, served notice upon the employer of its desire to amend the existing collective bargaining agreement in such a manner as to ultimately exclude all Negro firemen

from service. New agreements were entered into between the Brotherhood and the employer limiting the plaintiffs' employment opportunities and controlling their seniority rights. The Negro firemen were not given notice or opportunity to be heard with respect to either of these agreements which were put into effect before their existence was disclosed to them. *Id.* at 194-196.

White men junior in seniority were placed in jobs highly desirable in point of wages, hours and other conditions, while the plaintiffs were deprived of employment for sixteen days and then assigned to more arduous, longer and less remunerative work in local frieght service. *Id.* at 196.

These allegations from *Steele* are closely analogous to those in the instant litigation and, with respect to the last, it is to be recalled that paragraph 21 of the instant complaint alleges:

> "21. That the aforesaid decision was purportedly made pursuant to an alleged new set of rules adopted by the defendants jointly a few weeks prior to the summary notification of the plaintiffs of the defendants' decision to deregister them; that the plaintiffs were at no time notified or otherwise informed that changes in the rules were being considered; that the plaintiffs were at no time time notified or otherwise informed that the adoption of new rules was being contemplated; that the plaintiffs were never given an opportunity to present their point of view, position or interest during or proceeding the negotiations leading up to or at the time of the adoption of the new rules; that the plaintiffs were never informed when the new rules were adopted; that the plaintiffs were never given notice of the new rules or a copy thereof prior to being informed of the decision to deregister them."

Chief Justice Stone, speaking for this Court, emphasized that when Congress enacted the Railway Labor Act and authorized a labor union, chosen by a majority of a craft, to represent the craft, it did not intend to confer plenary

power upon the union to sacrifice the rights of the minority of the craft for the benefit of its members without imposing on it any duty to protect the minority. This Court pointed out that since the plaintiffs were neither members of the Brotherhood nor eligible for membership, the authority of the union to act for them was derived not from their action or consent, but wholly from the command of the (Railway Labor) Act. *Id.* at 199.

> "The purpose of providing for a representative is to secure those benefits for those who are represented and not to deprive them or any of them of the benefits of collective bargaining for the advantage of the representative or those members of the craft who selected it." *Id.* at 201.
>
> "Once a craft or class has designated its representative, such representative is responsible under the law to act for all employees within the craft or class, those who are not members of the represented organization, as well as those who are members." *Id.* at 201.
>
> "Unless the labor union representing a craft owes some duty to represent non-union members of the craft, *at least to the extent of not discriminating against them as such in the contracts which it makes as their representative,* the minority would be left with no means of protecting their interests or, indeed, their right to earn a livelihood by pursuing the occupation in which they are employed. . . . The fair interpretation of the statutory language is that the organization chosen to represent a craft is to represent all its members, the majority as well as the minority, and *it is to act for and not against those whom it represents.* It is a principle of general application that the exercise of a granted power to act in behalf of others involves the assumption toward them of a duty to exercise the power in their interest and behalf, and that such a grant of power will not be deemed to dispense with all duty toward those for who it is exercised unless so expressed." *Id.* at 201-202. (Emphasis added.)

The opinion then continues and in language which has often been repeated, but which warrants repetition again, said:

> "We think the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, cf. J. I. Case Co. v. National Labor Relations Board, supra, 321 U.S. 335, 64 S. Ct. 579, but it has also imposed on the representative a corresponding duty. We hold that the language of the Act to which we have referred, . . . read in the light of the purposes of the Act, expresses the aim of Congress to impose on the bargaining representative of a craft or class of employees the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts without hostile discrimination against them." (323 U.S. at 202-203.)

Mr. Chief Justice Stone observed that the duty of fair representation as defined above with its emphasis on the affirmative constitutional duty of the exclusive bargaining representative to protect the rights of the minority did not prevent the union from making decisions in good faith which were based on relevant differences, but that "the statutory power to represent a craft and to make contracts as to wages, hours and working conditions does not include the authority to make among members of the craft discrimination not based on such relevant differences." (323 U.S. at 203.) The bargaining representative, he further observed, was not authorized to make distinctions based upon "irrelevant and invidious" considerations. Moreover, said Mr. Justice Stone in dealing with the matter which lies at the very core of the instant litigation, that:

> "So long as a labor union assumes to act as the statutory representative of a craft, it cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the craft. While the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership, *it does require the union, in collective bargaining and in making contracts with the carrier, to represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith. Wherever necessary to that end, the union is required to consider requests of non-union members of the craft and expressions of their views with respect to collective bargaining with the employer and to give to them notice of and opportunity for hearing upon its proposed action.*" *Id.* at 204. (Emphasis added.)

There are two final aspects to the *Steele* case which are important with respect to the instant litigation.

The *Steele* complaint prayed for the following relief: an injunction against enforcement of the agreements made between the Railroad and the Brotherhood; for an injunction against the Brotherhood and its agents from purporting to act as representatives of the plaintiffs and others similarly situated under the Railway Labor Act, so long as the discrimination continued and so long as it refused to give the plaintiffs notice and hearing with respect to proposals affecting their interests; for a declaratory judgment as to their rights; and for an award of damages against the Brotherhood for its wrongful conduct. 323 U.S. at 197. The defendants argued that the plaintiff had a duty to take his complaint to the Adjustment Board. This Court held the argument to be without merit saying "that Board *could not give the entire relief here sought*" and that, therefore, it could not "say that a hearing, if available, before either of these tribunals would constitute an *adequate* administrative remedy."

Furthermore, said this Court, in the absence of any available administrative remedy—that is an adequate remedy, a remedy that would give the entire relief sought, a remedy which would not mutilate the comprehensive relief of equity—"the right here asserted, to a remedy for breach of the statutory duty of the bargaining representative to represent and act for the members of a craft, is of judicial cognizance. That right would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such a duty or obligation and which it is their duty to give in cases in which they have jurisdiction." Moreover, this Court added that it could not "say . . . that resort to such proceedings in order to secure a possible administrative remedy . . . is prerequisite to relief in equity."

This Court concluded that the breach of duty complained of in the *Steele* case "contemplates resort to the usual judicial remedies of injunction and award of damages when appropriate for the breach of that duty." In this connection it is apposite to observe that this Court at pages 203-204 held:

> "The representative which thus discriminates may be enjoined from so doing, and its members may be enjoined from taking the benefit of such discriminatory action. No more is the Railroad bound by or entitled to take the benefit of a contract which the bargaining representative is prohibited by the statute from making. In both cases the right asserted, which is derived from the duty imposed by the statute on the bargaining representative, is a federal right implied from the statute and the policy which it has adopted. It is the federal statute which condemns as unlawful the Brotherhood's conduct. 'The extent and nature of the legal consequences of their condemnation, though left by the statute to judicial determination, are nevertheless to be derived from it and the federal policy which it has adopted.' Deitrick v. Greaney, 309 U.S. 190, 200, 201, 60 S.Ct. 480, 485, 84 L. Ed. 694 . . .". 323 U.S. at 203-204.

The possible distinctions between *Steele* and the case at bench have been obviated by subsequent decisions. *Steele* arose in a state court, but its companion case, *Tunstall* v. *Brotherhood*, 323 U.S. 210 (1944) held that similar claims could be considered by the Federal District Courts by reason of jurisdiction conferred by 28 U.S.C.A. § 41(8) (now 28 U.S.C.A. § 1337) as a case arising under a federal law regulating commerce. 323 U.S. at 213. The *Steele* case made judicially cognizable unfair representation in the negotiation and execution of collective agreements. The *Tunstall* case carried the logic one step further. It made unfair representation in the administration of a collective agreement judicially cognizable and, like the *Steele* case, provided that the remedy be both injunctive and monetary.

Decided simultaneously with *Steele* and *Tunstall* was *Wallace Corporation* v. *National Labor Relations Board*, 323 U.S. 248, wherein the concepts of unfair representation were applied to the National Labor Relations Act:

> "The duties of a bargaining agent selected under the terms of the Act extend beyond the mere representation of the interests of its own group members. By its selection as bargaining representative, it has become the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially. Otherwise, employees who are not members of a selected union at the time it is chosen by the majority would be left without adequate representation." 323 U.S. 255-256.

In *American Communications Associations* v. *Douds*, 339 U.S. 382 (1950), the Supreme Court relying on the *Steele*, *Tunstall* and other similar cases, said:

> "Under the statutory scheme, unions which become collective bargaining representatives for groups of employees often represent not only members of the union but non-union workers or members of other unions as well. Because of the necessity to have strong unions to bargain on equal terms with strong

> employers, individual employees are required by law to sacrifice rights which, in some cases, are valuable to them. See J. I. Case Co. v. National Labor Relations Board, 1944, 321 U.S. 322, 64 S.Ct. 576, 88 L.Ed. 762. The loss of individual rights for the greater benefit of the group results in a tremendous increase in the power of the representative of the group—the union. *But power is never without responsibility. And when authority derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself.*" 339 U.S. at 401-402. (Emphasis added.)

Subsequently, in 1952 this Court had before it a case involving a factual pattern considerably different from that in the *Steele* case, but it held that nevertheless the principles enunciated in the *Steele* case would govern: *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768.

In the *Howard* case the white brakemen were organized in a union which entered into an agreement with the railroad the ultimate effect of which would be to force the replacement of Negro "porters" who were actually doing the work of brakemen by white employees. The Negro "porters" were organized in a separate union of their own. The Supreme Court pointed out that it was argued by the defendant Brotherhood that it "owed no duty at all to refrain from using its statutory bargaining power so as to abolish the jobs of the colored porters and drive them from the railroads". The Supreme Court held the argument to be unsound and held that even though the Negro porters were organized in a separate union of their own there had, nevertheless, been a breach of duty by the defendant Brotherhood. In the course of its opinion the Supreme Court said:

> "Here, as in the Steele case, colored workers must look to a judicial remedy to prevent the sacrifice or obliteration of their rights under the Act. For no

> *adequate* administrative remedy can be afforded by the National Railroad Adjustment or Mediation Board. . . . *This dispute involves the validity of the contract, not its meaning.* . . . Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive orders notwithstanding the provisions of the Norris-LaGuardia Act. We need add nothing to what was said about inapplicability of that Act in the Steele case and in Graham v. Brotherhood of Firemen, 338 U.S. 232, 239-240, 70 S. Ct. 14, 18, 94 L. Ed. 22.
>
> "Bargaining agents who enjoy the advantages of the Railway Labor Act's provisions must execute their trust without lawless invasions of the rights of other workers. . . . On remand, the District Court should permanently enjoin the Railroad and the Brotherhood from the use of the contract or any other similar discriminatory bargaining device to oust the train porters from their jobs." (pp. 774-775.)

In *Conley* v. *Gibson,* 355 U.S. 41 (1957), this Court dealt with still another of the series of cases predicated on discrimination under the Railway Labor Act. In that case Negro employees, complaining that their collective bargaining representative refused and neglected to furnish them with fair representation, sought a declaratory judgment, an injunction and damages. This Court summarized their complaint as follows:

> "A contract existed between the Union and the Railroad which gave the employees in the bargaining unit certain protection from discharge and loss of seniority. In May, 1954, the Railroad purported to abolish 45 jobs held by petitioners or other Negroes all of whom were either discharged or demoted. In truth the 45 jobs were not abolished at all but instead filled by whites as the Negroes were ousted, except for a few instances where Negroes were rehired to fill their old jobs but with loss of seniority. Despite repeated pleas by petitioners, the Union, acting according to plan, did nothing to protect them against these discriminatory discharges and refused to give them protection comparable to that given

> white employees. The complaint then went on to allege that the Union had failed in general to represent Negro employees equally and in good faith. It charged that such discrimination constituted a violation of petitioners' right under the Railway Labor Act to fair representation from their bargaining agent."

This Court after pointing out that the *Conley* case was another in the series beginning with *Steele* v. *Louisville & Nashville R. Co.*, in which it had "emphatically and repeatedly ruled that an exclusive bargaining agent under the Railway Labor Act is obligated to represent all employees in the bargaining unit fairly and without discrimination because of race and has held that the Courts have power to protect employees against such invidious discrimination," went on to write:

> "The respondents point to the fact that under the Railway Labor Act aggrieved employees can file their own grievances with the Adjustment Board or sue the employer for breach of contract. Granting this, it still furnishes no sanction for the Union's alleged discrimination in refusing to represent petitioners. The Railway Labor Act in an attempt to aid collective action by employees, conferred great power and protection on the bargaining agent chosen by a majority of them. As individuals or small groups the employees cannot begin to possess the bargaining power of their representatives in negotiating with the employer or in presenting their grievances to him. Nor may a minority choose another agent to bargain in their behalf. We need not pass on the Union's claim that it was not obliged to handle any grievances at all because we are clear that once it undertook to bargain or present grievances for some of the employees it represented it could not refuse to take similar action in good faith for other employees just because they were Negroes."

In *Gainey* v. *Brotherhood of Railway and Steamship Clerks*, 313 F. 2d 318, 322-323 (3rd Cir. 1963), *cert. denied*, 363 U.S. 811, the Court discussed the *Steele* rule in detail:

"The *Steele* rule is that a union which possesses the power to act for all employees of a bargaining unit has the corresponding duty to represent all the members of the unit fairly, impartially, and in good faith, without 'hostile discrimination' against any of them. Although originally employed in racial discrimination problems arising under the Railway Labor Act, the protection afforded by this doctrine has since been extended to encompass all forms of hostile discrimination. See *Ford Motor Company* v. *Huffman,* 345 U.S. 330 (1952); *Mount* v. *Grand International Brotherhood of Locomotive Engineers,* 226 F. 2d 604 (6 Cir. 1955), *cert. denied,* 350 U.S. 697; *Cunningham* v. *Erie R.R.,* 266 F. 2d 411 (2 Cir. 1959); *Hardcastle* v. *Western Greyhound Lines,* 303 F. 2d 182 (9 Cir. 1962).

"In order to come within its ambit, the complaint before us must have more than conclusory statements alleging discrimination. In particular, plaintiffs must make a showing that the action or inaction of the statutory representative complained of was motivated by bad faith, for the gravamen of the rule is 'hostile discrimination', an allegation that certain conduct of the brotherhood or a condition permitted to exist by it is 'invidious' and 'discriminatory' without a concomitant identification of lack of good faith, will not set forth a claim sufficient to call for the use of the *Steele* doctrine. *Hardcastle* v. *Western Greyhound Lines, supra* at 185-86; *Colbert* v. *Brotherhood of Railway Trainmen,* 206 F. 2d 9, 12 (9 Cir. 1953)."

The Third Circuit upheld the dismissal of the complaint because of the failure of the plaintiffs to allege that there was not a good faith effort on the part of the Brotherhood to alleviate the disparity in wage rates, and that the allegations of the Brotherhood's bad faith, hostile discrimination, were at most illusory. 313 F. 2d at 323.

The Court in *Gainey,* further summarized the three broad categories of cases applying the *Steele* doctrine, 313 F. 2d at 324:

"(1) racial discrimination dealing with a patent disregard and sacrifice of job opportunities and seniority rights of Negro employees for the sole purpose of benefitting white employees; e.g., *Steele* v. *Louisville and N. R.R. Co., supra; Graham* v. *Brotherhood of Locomotive Firemen,* 338 U.S. 232 (1949); *Conley* v. *Gibson, supra;*

(2) involving the arbitrary sacrifice of a group of employees' rights in favor of another stronger or more politically favored group, often in direct violation of established union practice, e.g., *Ferro* v. *Railway Express Agency, Inc.,* 296 F. 2d 847 (2 Cir. 1961); *Mount* v. *Grand International Brotherhood of Locomotive Engineers, supra; Hargrove* v. *Brotherhood of Locomotive Engineers,* 116 F. Supp. 3 (D.D.C. 1953); and

(3) discriminatory measures taken against an individual which sacrificed his rights for hostile and improper reasons, e.g., *Cunningham* v. *Erie R. R., supra; Brody* v. *Trans World Airlines, Inc.,* 174 F. Supp. 360 (D. Del. 1959); see also *Bohannon* v. *Reading Company,* 168 F. Supp. 662 (E.D. Pa. 1958). The common thread running throughout these opinions is the improper, usually bad faith, motivation for the course taken. That essential element is not present in the complaint or its collateral papers. Plaintiffs have no cause of action without it."

The *Steele* rule is not limited to cases concerning racial discrimination. Although originally employed in racial discrimination problems arising under the Railway Labor Act, the protection afforded by this doctrine has since been extended to cover all forms of hostile discrimination. *Mount* v. *Grand International Brotherhood of Locomotive Engineers,* 226 F. 2d 604 (6th Cir. 1955), *cert. denied,* 350 U.S. 697; *Cunningham* v. *Erie R. R.,* 266 F. 2d 411 (2nd Cir. 1959); including industries covered by the Labor Management Relations Act. *Ford Motor Co.* v. *Huffman,* 345 U.S. 330, 337 (1953); *Hardcastle* v. *Western Greyhound Lines,* 303 F. 2d 182 (9th Cir. 1962); *Rumbaugh* v. *Winifrede*

Railroad Company, 331 F. 2d 530, 534 (4th Cir. 1964); *Syres* v. *Oilworkers International Union,* 350 U.S. 892, reversing 223 F. 2d 739; *Humphrey* v. *Moore,* 375 U.S. 335, 356-358 (1964) (see footnote 6 and concurring opinions of Justices Goldberg, Brennan, Douglas and Harlan).

In the *Syres* case this Court without even bothering to write an opinion but simply enumerating the *Steele* line of cases reversed a judgment for the defendant in the Circuit Court and ordered further proceedings in the trial Court where individual employees had brought an action against their exclusive bargaining agent and their employer, and in which they sought to enjoin the defendants and to declare void a collective bargaining agreement which violated the duty of fair representation. This Court did this in the face of strenuous objection to the effect that the employees should have brought their complaint before the National Labor Relations Board.

This entire series of authorities was reaffirmed by this Court in *Vaca* v. *Sipes,* 386 U.S. 171 (1967).

The third count alleges a valid cause of action under Section 301a of the Labor-Management Relations Act (29 U.S.C.A., Section 185a)

> "The Supreme Court has all but sounded the death knell of the theory of exclusive N.L.R.B. jurisdiction in cases arising under section 301 of the Labor-Management Relations Act." *Carey* v. *General Electric Company,* 315 F. 2d 499, 508 (2 Cir. 1963).

In accord: *Vaca* v. *Sipes,* 386 U.S. 171 (1967); *Smith* v. *Evening News Assn.,* 371 U.S. 195 (1962); *Atkinson* v. *Sinclair Refining Co.,* 370 U.S. 238, 245 N.5 (1962); *Local 174, Teamsters* v. *Lucas Flour Co.,* 369 U.S. 95, 101 n.9 (1962); and *Dowd Box Co.* v. *Courtney,* 368 U.S. 502, 513 (1962).

Prior to this Court's decision in *Smith* v. *Evenuing News Assn.*, 371 U.S. 195 (1962), certain activities arguably constituting unfair labor practices were held to be within the exclusive jurisdiction of the National Labor Relations Board. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959). The *Garmon* type situation was one where state courts attempted to adjudicate controversies which "arguably" fell within the jurisdiction of the Board.

The *Garmon* rule was modified in *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95 (1962) and *Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962), where this Court held that state courts were not divested of jurisdiction over suits for violation of collective bargaining agreements by § 301. The scope of § 301 was further expanded in *Smith* v. *Evening News Association*, 371 U.S. 195 (1962).

In the *Smith* case the plaintiff, a member of a striking union, brought an action against his employer for breach of the collective bargaining agreement, alleging that the defendant employer, during the course of the strike, did not permit him to report for work although he was ready, willing and able to do so, while it permitted other categories of non-union employees, employees not covered by the collective bargaining agreement, to do so even though there actually was no work available for them. The defendant refused to pay full wages to the plaintiff while making such payments to the non-union employees. The claimed violation of the collective bargaining agreement was with respect to the clause prohibiting "discrimination against any employee because of his membership or activity" in the union. The action was brought in a state court (Michigan) which dismissed "for want of jurisdiction on the ground that the allegations, if true, would make out an unfair labor practice under the National Labor Relations Act and hence the subject matter was within the exclusive jurisdiction of the National Labor Relations Board." The Michigan Supreme Court affirmed, 362 Mich. 350, in reliance

upon *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236; *Garner* v. *Teamsters, etc. Union*, 346 U.S. 485; and *Weber* v. *Anheuser Busch*, 348 U.S. 468. This Court reversed and in doing so thereby disposed of the contentions of the Petitioners in this litigation not only with respect to the contention that the District Court is without jurisdiction, but, likewise, with respect to the contention that the exclusive jurisdiction is with the National Labor Relations Board. This Court held that jurisdiction was concurrent—that the acceptance of jurisdiction by the one did not preclude the jurisdiction of the other and it went on to point out that the National Labor Relations Board was itself in accord with that conclusion (371 U.S., at 198). Mr. Justice White, writing for this Court, stressed that "Section 301 is not to be given a narrow reading" (371 U.S., at 199), and said:

> "*Lucas Flour* and *Dowd Box*, as well as the later *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238, 82 S.Ct. 1318, 8 L.Ed. 2d 462, were suits upon collective bargaining contracts brought or held to arise under Sec. 301 of the Labor Management Relations Act and in these cases the jurisdiction of the courts was sustained although it was seriously urged that the conduct involved was arguably protected or prohibited by the National Labor Relations Act and therefore within the exclusive jurisdiction of the National Labor Relations Board. In *Lucas Flour* as well as in *Atkinson* the Court expressly refused to apply the preemption doctrine of the *Garmon* case; *and we likewise reject that doctrine here where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board. The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by Sec. 301 but it is not exclusive and does not destroy the jurisdiction of the courts in suits under Sec. 301.*" 371 U.S., at 197. (Emphasis added.)

This holding applies with compelling force in this action reaffirmed as it has been in this Court's recent decision in *Vaca* v. *Sipes, supra.* It has received not only wide acceptance and repetition, but extensive implementation as well. Thus in *Plumbers and Steam Fitters Union, Local No. 598* v. *Dillion,* 255 F. 2d 820, 823 (9 Cir. 1958), it was held:

> "The breach of contract may, as here, also be the source of an unfair labor practice cognizable by the N.L.R.B., but the District Court is not thereby deprived of jurisdiction over the private action for breach."

In *Todd Shipyards Corp.* v. *Industrial Union of Marine and Shipbuilding Workers, Local 39,* 344 F. 2d 102 (2 Cir. 1965), it was held:

> "The union argued below that primary jurisdiction in this case lies with the National Labor Relations Board. This argument was correctly rejected by the District Court since the federal courts have concurrent jurisdiction in actions brought under section 301 despite the fact that the wrong alleged as the substance of the action might also constitute an unfair labor practice."

In *Gilmour* v. *Wood, Wire and Metal Lathers International Union, Local No. 74,* 223 F. Supp. 236, the Court held that in a Section 301 action "the jurisdiction of the N.L.R.B. and of the United States District Courts are quite independent of each other" and it went on to observe that:

> "Since this is a Section 301 suit, the 'pre-emptive' doctrine of the Garmon case by which all courts, state and Federal, are divested of jurisdiction over suits involving unfair labor practices which are reposed in the exclusive primary jurisdiction of the N.L.R.B., is inapplicable. The Court in the Smith case followed Local 174, Teamsters, etc. v. Lucas Flour Co., 369 U.S. 95, 101 at Footnote 9, 82 S.Ct. 571, 575, 7 L.Ed. 2d 593; Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 82 S.Ct. 519, 7 L.Ed. 2d 483; and

> Atkinson v. Sinclair Refining Co., 370 U.S. 238, 245, at Footnote 5, 82 S.Ct. 1318, 1323, 8 L.Ed. 2d 462. All of these were Section 301 suits where it was held that the pre-emptive doctrine had no place. The Court expressly refused to apply the pre-emptive doctrine of San Diego Bldg. Trades Council, etc. v. Garmon, 359 U.S. 236, 79 S.Ct. 772, 3 L.Ed. 2d 775; Garner v. Teamsters, etc., Union, 346 U.S. 485, 74 S. Ct. 161, 98 L.Ed. 228, and Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 75 S. Ct. 480, 99 L.Ed. 546. None of these latter cases was a Section 301 suit, but each involved attempts to litigate unfair labor practices as opposed to breaches of contracts in the courts."

We note that Solicitor General Cox, on behalf of the National Labor Relations Board, filed a brief *amicus curiae*, expressing the view that ousting the Courts of jurisdiction under § 301 in the *Smith* case would not only fail to promote, but would actually obstruct, the purposes of the Act. 371 U.S. at 198, fn. 6. "The Board has, on prior occasions, declined to exercise its jurisdiction to deal with unfair labor practices in circumstances where, in its judgment, federal policy would best be served by leaving the parties to other processes of the law. See, e.g., *Consolidated Aircraft Corp.*, 57 N.L.R.B. 694; *Spielberg Mfg. Co.*, 112 N.L.R.B. 1080". *Ibid.*

The *Smith* Court also noted that *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448 has long since settled the matter that § 301 has substantive content and that Congress has directed the Courts to formulate and apply federal law to suits for violation of collective bargaining contracts, for § 301 is not to be given a narrow reading. 371 U.S. at 199.

Following the landmark case of *Smith* v. *Evening News*, *supra*, this Court decided *Humphrey* v. *Moore*, 375 U.S. 335 (1964). In that case, two employers within a multi-employer multi-union bargaining unit entered into an agree-

ment whereby one employer would purchase the operation of the other. When the employees of the "purchased" company were laid off, they filed grievances, asserting that their seniority should carry over to the new employer. The grievants were members of the union. A local joint committee of union and employer representatives (similar to the Joint Port Labor Relations Committee) acting under authority of the collective bargaining agreement, approved a revised seniority list whereby all employees of both employers would retain their respective seniority ratings. Some employees of the "purchasing" company were laid off and filed an action in a state court, seeking to enjoin the union and the company from carrying out the decision of the local joint committee to put the new seniority list into operation. As an alternative to injunctive relief, plaintiffs prayed for damages.

Initially, this Court summarized the controlling case law in the factual situation presented there, which is similar to that of the case at bench:

> "The undoubted broad authority of the union as exclusive bargaining agent in the negotiation and administration of a collective bargaining contract is accompanied by a responsibility of equal scope, the responsibility and duty of fair representation. *Syres* v. *Oil Workers' Union,* 350 U.S. 892; *Brotherhood of Railroad Trainmen* v. *Howard,* 343 U.S. 768; *Turnstall* v. *Brotherhood of Locomotive Firemen and Enginemen,* 323 U.S. 210; *Steele* v. *Louisville and N. R. Co.,* 323 U.S. 192. 'By its selection' as bargaining representative, it has become the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially. *Wallace Corp.* v. *Labor Board,* 323 U.S. 248, 255. The exclusive agent's obligation 'to represent all members of an appropriate unit requires (it) to make an honest effort to serve the interests of all those members, without hostility to any . . .' and its powers are 'subject always to complete good faith and honesty of purpose in the exercise of its dis-

cretion.' *Ford Motor Company* v. *Huffman,* 345 U.S. 330, 337-338." (375 U.S. at 342).

This Court further held the following allegations to be sufficient to constitute an action arising under Section 301 of the L.M.A.A.; that the union deceived the plaintiffs concerning their job and seniority rights; deceitfully connived with other employees and the International Union to deprive plaintiffs of their employment rights; that plaintiffs were prevented from having a fair hearing before the local joint committee; that the local and international unions acted dishonestly; and that the employer was put on notice that the union was charged with dishonesty and a breach of duty. The discharge was alleged to have violated the contract. 375 U.S. at 343.

Although recognizing the differing views as to whether or not a violation of the duty of fair representation is an unfair labor practice under the Act, the Court found that it was not necessary to resolve that issue. "Even if it is, or arguably may be, an unfair labor practice, the complaint here alleged that Moore's discharge would violate the contract and was therefore within the cognizance of federal and state courts; *Smith* v. *Evening News Association,* subject, of course, to the applicable federal law." 375 U.S. at 344. In a footnote (fn. 6, pp. 344-345), the Court noted that the union abandoned their position in the state courts that jurisdiction of the state courts had been preempted by the federal statutes, and relied upon *Ford Motor Co.* v. *Huffman, supra,* that individual employees "may undoubtedly maintain suits against their representative when the latter hostilely discriminates against them." The Supreme Court also noted that in *Syres* v. *Oil Workers International Union,* 350 U.S. 892, it reversed and ordered further proceedings in the trial Court where individual employees sued the exclusive bargaining agent and the company to enjoin and declare void a collective bargaining agreement alleged to violate the

duty of fair representation, in the face of a contention that the employees should have brought their proceedings before the National Labor Relations Board.

This Court held, on the merits, that the union took its position honestly, in good faith and without hostility or arbitrary discrimination. 375 U.S. at 350. We believe that honesty and good faith of the petitioners in deregistering the respondents in the instant case should also be determined only after a trial on the merits.

Although the majority of the Court treated *Humphrey* v. *Moore* as a breach of contract situation arising under Section 301, we note that Mr. Justice Goldberg, with the concurrence of Justice Douglas, Brennan and Harlan, would have treated the case as one where an individual employee was suing the union for breaching its duty of fair representation, a remedy which may also be extended to the employer. 375 U.S. at 356-357.

In *Fuller* v. *Highway Truck Drivers & Helpers Local 107*, 233 F. Supp. 115 (E.D. Pa. 1964), the plaintiffs sought damages and injunctive relief against the implementation of the decision of a joint employer-employee committee purporting to settle certain grievances in accordance with the terms of a collective bargaining contract. It was alleged that the employers of a multi-employer bargaining group violated the collective bargaining agreement to deprive plaintiffs of their seniority standing, and that the employers conspired with union officials, without the presence or knowledge of plaintiffs, to obtain a decision by the Joint Area Committee, based upon facts not of record, adverse to the sniority rights of plaintiffs.

In answer to the union's contentions that the Court did not have subject matter jurisdiction, the Court pointed out that the union had confused the question of jurisdiction with the question of whether the complaint states a cause of action.

> "The complaint charges a violation of the collective bargaining agreement. Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, gives this Court jurisdiction in such cases. Whether or not the claim is well founded, is another and distinct question." 233 F. Supp. at 117.

The Court also denied the union's contention that the allegations charged a violation of its duty of fair representation, "arguably" constituting an unfair labor practice and hence within the exclusive competence of the National Labor Relations Board under the rule of the *Garmon* case. It was held that plaintiffs' assertion of a violation of the collective bargaining agreement as a result of a conspiracy between the employer and the union brought the case within the holding of *Humphrey* v. *Moore*, 233 F. Supp. at 119.

> "Indeed, the allegations in the instant action would appear to present a stronger case for the plaintiffs than Humphrey, since, in Humphrey, the complaint did not charge employer participation in the union's breach of its duty of fair representation". *Ibid.*

The cited case of *Fuller* v. *Highway Truck Drivers & Helpers Local 107*, also discussed the plaintiffs' request to review the decision determining the seniority of the Joint Area Committee, a committee similar to the joint employer-union committees in the instant case. In language appropriate to the case at bench, the Court said:

> "However, plaintiffs' complaint is not directed merely to the Committee's interpretation of the contract. They assert that construction was reached as the result of conspiratorial action between Local 107 and other teamster representatives on the one hand, and [the employers] on the other. The distinction lies at the base of the *Humphrey* decision, where the complaint alleged that the decision of a Joint Conference Committee dovetailing the seniority lists of the two companies violated Moore's rights because: (1) The Joint Committee exceeded its

> powers under the existing collective bargaining contract in making its decision dovetailing seniority lists, and (2) The decision of the Committee was brought about by dishonest union conduct in breach of its duty of fair representation. So far as here material, the [*Humphrey* v. *Moore*] decision held that both grounds stated a claim under § 301 of the Act." *Id.* at 118-119.

The Court also held that the plaintiffs had standing to attack the decision of the Joint Area Committee, and that the complaint stated a cause upon which relief could be granted. Id. at 119.

In the instant case, the respondents' complaint has attacked the rules under which they were deregistered by the Joint Port Committee (paragraphs 21, 22, 23 and 30) and that the action by the Joint Port Committee was in violation of the terms of the collective bargaining agreement (paragraph 47). In addition, respondents contend that the Memorandum of March 18, 1958, was violated by the deregistration procedure followed by defendants. This Memorandum was, in effect, an amendment to the contract and the rationale of the *Smith* case applies for a breach of the amendment. *ILWU* v. *Kuntz,* 334 F. 2d 165, 170 (9th Cir. 1964).

In another District Court case, *Regan* v. *Ohio Barge Line, Inc.*, 227 F. Supp. 1013 (S.D.N.Y. 1964), the plaintiffs sued the union for conspiring and acting in cooperation and collusion with the employers "in that they condoned and permitted the wrongful discharge and termination of plaintiffs' employment without proper cause, and thereby waived any rights and protections of plaintiff under the (collective bargaining) agreement . . . which rights said Union had a duty to enforce in plaintiffs' behalf" and that such activity constituted a breach of the collective bargaining agreement and plaintiffs have exhausted the remedies available

to them thereunder. *Id.* at 1013-1014. The Union moved to dismiss for lack of jurisdiction.

> "The amended complaints allege a violation of the collective bargaining agreement by District 50 in asserting that District 50 failed to protect the rights of the plaintiffs under the collective bargaining agreement. *Humphrey* v. *Moore,* 375 U.S. 335, 341-344, is authority that under these circumstances a cause of action is spelled out under Section 301. Accordingly, the motion of District 50 to dismiss for lack of jurisdiction the causes of action asserted against it must be denied." *Id.* at 1014.

See *N.L.R.B.* v. *Pennwoven, Inc.,* 194 F. 2d 521, 524 (5 Cir. 1952) which held that a violation of a labor contract between a union and an employer is not an unfair labor practice under the statute. This holding was followed in *Fibreboard Paper Products Corp.* v. *East Bay U. of Mach., Local 1304,* 344 F. 2d 300, 304 (9th Cir. 1965), *cert. denied* 382 U.S. 826.

Whether we assume *arguendo* that the 1963 amendments, pursuant to which the petitioners claim the respondents were deregistered, were in fact legally valid and binding because properly enacted or, if we assume, as the respondents do in this action, that the 1963 amendments were invalid as a matter of law and consequently of no force and effect because enacted by the petitioners in violation of the union's duty of fair representation and with the connivance of PMA, then it is nevertheless claimed by the respondents that the agreement was violated by reason of the following: (1) that the respondents have been deregistered in violation of the clear terms of the collective bargaining agreement since that agreement does not sanction such penalty for the claimed infractions which, in any event, are, in large measure, denied by the respondents and which deregistrations, moreover, were motivated by hostility and bad faith on the part of the petitioners; (2) because the respondents

were, with hostility and in bad faith, refused and denied equality of treatment—that they were not in fact judged by the same standards—as all other persons similarly situated; and (3) because the respondents were, with hostility and in bad faith, deprived of the rights and remedies embodied in the agreement for their defense against the claimed violations—that the respondents were illegally and improperly deprived of those rights spelled out in the agreement involving procedural due process and equal protection. That denial involved not only initially lack of notice, particularization of charges, right of confrontation and fairness of hearing, but likewise, subsequently, promptness in the operation of the internal grievance procedures. More specifically with respect to this latter, the appeals taken by the respondents were totally disregarded and ignored until the petitioners, awakened by the commencement of this action, offered to proceed with the appeals. And even then, they did not do so until long after this action was commenced.

These, stated schematically, are some of the major aspects of the violations of the collective bargaining agreement and represent the core of the third cause of action. The cited authorities leave no doubt that these constitute not only a good cause of action upon which relief may be granted, but one with respect to which these respondents have properly invoked the jurisdiction of the District Court.

The petitioners' reliance on *Woody* v. *Sterling Aluminum Products, Inc.*, 365 F. 2d 448 (8 Cir. 1966), cert. den. 386 U.S. 957, reh. den. 386 U.S. 1027

The petitioners' reliance on *Woody* v. *Sterling Aluminum Products, Inc., supra* (Br., p. 17) is entirely misplaced.

First, it clearly appears in the *Woody* case that the issue was whether an action may lie under Section 301 of the

Labor Management Relations Act where the plaintiffs have not attempted to exhaust (or even to resort to) the applicable grievance procedures. The court obviously correctly held in the negative. But this is a situation which has no parallel in the instant litigation where, as already has been shown, the respondents thoroughly exhausted the internal remedies available to them.

Secondly, the court in the *Woody* case held that the District Court did not have jurisdiction of the alleged cause of action under first count of second amended complaint of former employees who charged the union with conspiring and colluding with employer, with bargaining in bad faith to detriment of former employees, and with failing to represent former employees fairly and honestly, since the charges of bad faith in negotiating the collective bargaining agreement *were not predicated on collective bargaining agreement itself* so as to give District Court jurisdiction under Section 301 of the Labor Management Relations Act, and that the charges were, therefore, within the exclusive jurisdiction of the National Labor Relations Board.

Whether the court in the *Woody* case was correct or incorrect in this holding is immaterial here. It is immaterial because the factual pattern has no parallel. In the instant litigation the claim definitely arises from the breach of an existing collective bargaining agreement and insofar as it alleges unfair representation in the negotiation of a secret oral agreement, it is a secret oral agreement which purports to amend the existing collective bargaining agreement and to destroy vested rights of the respondents thereunder.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be denied in all respects.

January 23, 1968.

Respectfully submitted,

IRVING A. THAU,
2 Cannon Street,
Poughkeepsie, New York,

FRANCIS HEISLER,
P. O. Drawer 3996,
Carmel, California,

ARTHUR BRUNWASSER,
1255 Post Street,
San Francisco, California,

Attorneys for Respondents.

APPENDIX A

IN THE

United States District Court

FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

No. 42,284

GEORGE R. WILLIAMS, *et al.*,

Plaintiffs,

vs.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation; INTERNATIONAL LONGSHOREMEN'S and WAREHOUSEMEN'S UNION, an unincorporated association, *et al.*,

Defendants.

AFFIDAVIT OF STANLEY L. WEIR IN OPPOSITION TO MOTIONS TO DISMISS

State of California
City and County of San Francisco—ss.

STANLEY L. WEIR, being duly sworn, deposes and says:

I am one of the plaintiffs in the above-entitled action. I make this affidavit in opposition to the several motions now before this Court, made by the defendants pursuant to Rule 12 of the Federal Rules of Civil Procedure, which seek a dismissal of the Fourth Amended Complaint.

I was registered by the San Francisco Joint Port Labor Relations Committee on June 1, 1959, pursuant to the terms

of an amendment to the then existing collective bargaining agreement. The amendment is entitled "Memorandum of Rules Governing Registration and De-Registration of Longshoremen in the Port of San Francisco", dated March 18, 1959. A photostatic copy of this Memorandum is annexed to the Fourth Amended Complaint as Exhibit "A" and will hereinafter be referred to as the 1958 Memorandum. I was summarily de-registered on June 17, 1963, by the San Francisco Joint Port Labor Relations Committee without prior notice, without specification of purported charges and without any opportunity to be heard allegedly pursuant to the terms and provisions of Section 9 of the 1958 Memorandum.

It is my contention that I was de-registered by the Joint Port Labor Relations Committee in violation of the express terms, conditions and provisions of the 1958 Memorandum; that I was not afforded, and the defendants wilfully refused and denied me, the benefit of the provisions therein contained (and, likewise, those contained in the basic collective agreement, the Pacific Coast Longshore Agreement: 1961-1966) respecting procedural due process and equal protection; that in every basic respect I was denied and refused by the union defendants the fair representation to which I am entitled both under the collective agreement and as a matter of law; that the defendant PMA actively participated in that denial and refusal of fair representation by the union defendants; that I am not, in fact, guilty of any infraction of the rules which governed my conduct as a Class "B" longshoreman which I *infer* are charged against me by the Joint Port Labor Relations Committee; that I am only able to *infer* what those charges may be because at no time prior to my de-registration was I furnished with the particulars of the alleged charges against me by the Committee notwithstanding the fact that I made both oral and written demands therefor; that for reasons which will become clear hereinafter I am still not

certain precisely what alleged charges there were against me, if any, at the time of my de-registration; that I have been denied equality of treatment with all other Class "B" longshoremen similarly situated; and that, finally, my de-registration was the outcome of hostility, malice and bad faith on the part of the defendants.

I recognize that the statements I have just made are, to a certain extent, merely conclusions. However, I represent to this Court that I shall in the balance of this affidavit (and, of course, ultimately on the trial of this action) demonstrate the underlying facts which compel these conclusions and to satisfy this Court with respect to their truthfulness.

During the latter half of 1962, the Class "B" longshoremen were informed by officials and representatives of the union defendants that, very shortly, the "freeze" which had been imposed early in 1960 on the promotion of Class "B" longshoremen to Class "A" would be rescinded and that, upon its occurrence, the Class "B" longshoremen would rapidly be moved into the Class "A" category. The lifting of the freeze actually occurred soon thereafter, and by February of 1963 the procedures for such transfers were underway.

The first notice to the Class "B" longshoremen that the procedures were actually in motion came with notification that the defendant, Local No. 10, was conducting an investigation of our eligibility for membership in the union. (We were told to pick up, complete and execute application forms for membership in the union.) I received such notification in the form of an undated letter approximately a week prior to February 26, 1963. The letter to me, on the stationery of Local No. 10, reads as follows:

> "Please be advised that it will be necessary for you to appear before our Investigating Committee

to be investigated for possible membership in the Union.

The meeting will be held on FEB 26, 1963 at 7 p.m. You are to report to the lobby of the Union office, 400 North Point Street, San Francisco.

Please bring your local 10 Class 'B' Book with you and make the following records available to the Committee if you have them:

1. Previous membership in any union
2. Strike records
3. Withdrawal (sic) cards

You will have to come in to the Union Office before the above meeting and file your application, which is enclosed, and also deposit the sum of $10.00 which shall be the initiation fee.

Membership action of March 7, 1960.

M/S/C That all new 'B' members are required to pay the current building payments when initiated.

This means that the total sum paid by 'A' members to date prior to your initiation is $216.00"

On February 26, 1963, I appeared before the Investigation Committee of Local No. 10 as directed.

Parenthetically, I believe it important to emphasize that this was an investigation to determine my eligibility for union membership, not for transfer to Class "A" status. There is no closed shop. There are, in fact, Class "A" longshoremen who are not members of the union. The two categories are not identical.

When I appeared before the Investigating Committee of Local No. 10, I observed that its Chairman that evening was Carl Smith, that there were two Sargeants of Arms, Odel Franklin and Benny Hunter, and that there were also present, among others, one Anderson, a gang boss, whose

Appendix A

first name I do not know, Dave Littleton, John Rutter and Thomas Silas. The latter, Thomas Silas, although present was not a member of the Investigating Committee. I was asked initially to hand over my completed and executed application for membership in the union in duplicate which, among other things, provided that the applicant agreed thereby to work in the hold, that is, at the most demanding, taxing and difficult longshore work, for an additional period of five years if admitted into the union.* I was then asked for my records in other unions and related documents, which after being examined and found to be unobjectionable, were returned to me. I was thereupon told I was clear for union membership. I was told this after John Rutter had an-

---

* The Memorandum of 1958 contained provisions with respect to the relative seniority of Class "A" longshoremen, Class "B" longshoremen and casuals. In Section 1 the Memorandum of 1958 states:

"Section 1. *Seniority Groups.*

Longshoremen employed shall fall in the following categories:

A. Registered Longshoremen.

B. Limited Registration Longshoremen.

Other workers doing longshore work (Social Security men) are casuals and have no seniority rights or registration status."

These provisions respecting seniority receive part of their practical application in the "Rules and Regulations Governing Low-Man-Out System of Dispatch for Individual Longshoremen" of December 30, 1958, adopted by the San Francisco Port Labor Relations Committee (hereinafter referred to as Low-Man-Out Rules). For this Court's information, a true copy of these Low-Man-Out Rules are hereto annexed, made part hereof and marked Exhibit "A". The significance of the agreement the union sought from each prospective Class "A" applicant with respect to the condition requiring the applicant to work five years longer in the hold, is that the union sought, unilaterally and in spite of the terms of the collective agreement, to create, even among the Class "A" men, a five-year category of second-class "citizenship", so to speak. This is a salient matter which will, in view of certain facts to be related hereinafter, take on even greater importance when integrated with those matters to be discussed hereinafter.

nounced to the Committee that the only possible violation he had discovered against my record was that I had dropped four hours in low-man-out violations in 1962. No date was specified for these possible violations, and since they, in any event, were within the ten-hour allowable limitation, I was clear. I was about to be dismissed when Thomas Silas approached John Rutter and handed him one or more slips of paper. After looking at them, John Rutter said, in substance, "Wait a minute. Silas says that you have some other low-man-out violations and that altogether your total low-man-out violations are thirteen and one-half hours. That is more than the ten-hour allowable limit. You are not clear." I asked for the dates of such violations. I said that I did not have any such violations, that I had my records with me and that, if they gave me the specific dates the violations were supposed to have occurred, I was prepared, then and there, to defend myself and demonstrate that the charge was baseless in all respects. The Chairman, Carl Smith, then told me that as of that evening they had changed their procedural rules, that they were not permitting anyone to defend himself before the Committee that evening, and that I could, by going to the records checker's office at 400 North Point Street, the following morning, do so there. I then said to the Chairman, "Is there any procedure for returning here, after I clear myself at the records checker's office tomorrow?" John Rutter then spoke up and said, "I am the records checker. If you clear yourself with me tomorrow morning, I'll see to it that you get back here." It was then that I was dismissed by the Investigating Committee.

At nine o'clock the following morning, when the records checker's office opened, I was there. John Rutter and Odel Franklin were both present. I spoke to Rutter and asked him to get my records together in order that we might go over them. He was visibly embarrassed but finally said

that he was going to let the man who had been *specially* handling my case do that. He then picked up the phone and spoke to Thomas Silas and asked him to come over to the office. I waited and finally Silas arrived and got my records together. He first accused me of dropping six hours on the low-man-out system on April 23, 1962. I pointed out to Silas that this did not represent a violation on my part, that it represented an error on the part of the dispatcher and that when I discovered the error a day or two later, I took it up with the dispatcher and the error was corrected. Silas turned to the pages for the following days and, indeed, found what I told him was in fact true. He then said, "Well, that eliminates that charge." He then presented me with a charge that I had a two-and-one-half hour violation on either May 2nd or 3rd of 1962. I then went over that charge with him in detail and showed him that it again represented a mere bookkeeping error which was discovered shortly after it occurred and that it was immediately corrected after its discovery. He thereupon went over the records and agreed that the charge was unfounded. He then said to me, "Well, that eliminates that charge, too. You will hear from us by mail." I then said, "Wait a minute. Last night you accused me of thirteen-and-one-half hours of violations. Let us go through the other five hours you accused me of and see if they exist." Odel Franklin, who had been listening, interjected himself and said, "Yeah, you might as well get them all while you are at it." But Silas, after saying that it was not necessary to check the others since they were less than ten hours, finally admitted that he had nothing further. I then became angry and said, in effect, "What is going on here? Even if I had been guilty of the eight-and-one-half hours of violations which you took up with me this morning and which I showed you didn't exist, I would have still passed last night since the allowable number was

ten. Why did you accuse me of thirteen-and-one-half hours?" Silas did not reply.

While this was going on between Silas and me, the Secretary-Treasurer of Local No. 10, Reino Erkilla, was present on some other business but was listening to the entire conversation. He, too, became irritated at the obvious frame-up that had occurred and turned to Silas and said, "Is this man clean or isn't he?" Silas said that I was but that he had no power to change the decision of the Committee. Only the Committee could change its own decision. I said, "Why don't you cite me for tonight? The Committee is meeting and I am available." Silas replied, "No, we can't do that, but we will notify you by mail." Mr. Erkilla then said, "Well, for what date are you going to cite him?" Odel Franklin said it would be done for the following Monday evening and Silas replied that that would be a proper time. I left the records checker's office at this point.

A day or two later I received another undated letter from Local No. 10, identical with the first, but calling for my appearance before the Investigating Committee on the evening of March 4, 1963. A photostatic copy of that letter is hereto annexed as Exhibit "B". I appeared as directed. When I arrived, I found that Odel Franklin was in charge of scheduling the order of the appearance of the men before the Committee. He said to me that I was not on the agenda for that evening. I asked him why not and showed him my letter calling for my appearance. He said, "I'll go in and talk to the Committee and see what they want to do about it." He came out a few minutes later and told me that the Committee was not going to see me; that instead they had passed a procedural motion that evening to the effect that they would not see any applicant whom they had previously interviewed. I did not go before the Committee that evening nor was I ever permitted to

do so thereafter. I, therefore, wrote the following letter to Mr. James Kearny, the President of Local No. 10:

"1720 Buena Avenue
Berkeley, 3, California
March 8, 1963

Mr. James Kearney
500 Northpoint Street
San Francisco, California

Dear Brother Kearney:

I am writing this letter to ask for your help in clearing my name. At last night's Local 10 meeting the International President, Harry Bridges, made it very clear that the Local's Investigating Committee has rejected the men it considered chiselers, dues delinquents, and contract violators. I cannot disagree, but the Committee can make mistakes as was pointed out in the meeting.

At least one mistake was made that I know of. They rejected me for chiseling thirteen and one-half (13½) hours, or three and one-half (3½) over the allowable in the April-May period of last year.

The next morning, as requested, I went to the Union Record Checkers to clear myself. Their records showed nine (9) hours. While this was less than the allowable ten (10) hours, I showed that even this number was in error.

In spite of this my case was sent to another and higher committee that handles men who didn't pass. I was not given a chance to prove my innocence to the Local 10 Investigating Committee as I had been promised.

I want the chance to clear myself and correct the mistake before the Investigating Committee so

that I can be registered along with the other men who were able to meet that Committee's standards.

Fraternally,
Stanley Weir #80524"

This letter which was sent to Mr. Kearney by registered mail never evoked a response or acknowledgment. I could obtain no further information as to my status even though I repeatedly inquired, except that the entire matter was in the hands of the Joint Port "B" Labor Relations Committee of which John Trupp of PMA and William Chester of Local No. 10 were the point co-chairmen. Finding my search for information frustrated in every direction, I finally on May 14, 1963, sent identical telegrams to both Trupp and Chester in their capacities as joint co-chairmen of the Committee. These identical telegrams read as follows:

"DEAR SIR THIS IS TO AVOID ANY POSSIBILITY OF A MISTAKE I HAVE BEEN INFORMED BY LOCAL UNION OFFICIALS THAT YOUR COMMITTEE MAY STILL HAVE ME LISTED WITH THE SAME LMO VIOLATIONS THAT I WAS CHARGED WITH LAST FEBRUARY 26. SUBSEQUENT TO THAT DATE IT HAS ADMITTEDLY BEEN ESTABLISHED THAT THE CHARGE WAS IN ERROR. I KNOW THAT YOU CANNOT AGAIN TAKE ANY PRECIPITOUS ACTION WITHOUT CHECKING THIS ERROR.

IF THERE ARE OTHER CHARGES I REQUEST THAT I IMMEDIATELY BE NOTIFIED, CONFRONTED, AND TRIED FOR THEM SO THAT THERE WILL BE NO DELAY IN MY OBTAINING UNION MEMBERSHIP AND A REGISTRATION ALONG WITH THE OTHER B REGISTERED MEN WHO HAVE QUALIFIED FOR SAME."

Again I waited nearly a month and received neither response nor acknowledgment. Again I found all doors

closed to me in my quest for information. Consequently, on June 10, 1963, I sent duplicate copies of the following letter to Mr. Holtgrave and Mr. Kearny:

"1720 Buena Avenue
Berkeley 3, California
June 10, 1963

Mr. R. R. Holtgrave, Secretary
Joint Port Labor Relations Committee
c/o Pacific Maritime Association
16 California Street
San Francisco, California
and
Mr. James Kearny, Chairman
Joint Port Labor Relations Committee
c/o ILWU
400 North Point Street
San Francisco, California

Dear Sirs:

By this letter I am again attempting to avoid any possibility of a mistake being made in my case. Time and events may have blurred the facts.

On February 24 of this year I was called before the Union Investigating Committee as was proper since I had been cleared by your committee for A status. In that interview I was told I had an absolutely clear record except for the fact that I had chiseled some hours.

From documents produced at that time by T. Silas, I was told I was guilty of chiseling 13½ hours, or 3½ hours over the amount that would allow me to pass.

I was not allowed to prove my innocence before the committee. I was instructed that I could attempt to do so by going to the Record's Checker in the

Joint Records Office at 400 North Point Street, San Francisco, at any future date; and that if I was able to do this successfully that I would be notified to again come before the committee.

I appeared at the Records Office eleven hours later. (February 25, 9 a.m.). From his check of my records Mr. Silas presented me with dates on which I was said to have dropped six (6) hours and two and one-half (2½) hours. I proved that I had picked up these hours and he (Mr. Silas) stated that the committee would contact me by mail since I had been able to clear myself. I then requested the right to clear myself of the additional five (5) hours that would make the thirteen and one-half (13½) hours that I had been accused of dropping the previous night. Mr. Silas was unable to do this. The additional five hours did not exist.

page 2

I requested the right to appear before the committee again that night. Mr. Silas stated I wouldn't be called until the following Monday.

I received via mail a notice to appear on Monday March 4, 1963 as he had promised. However, when I appeared I was told I was not to be heard, that my case was in the hands of the B Committee along with the other men whose status was doubtful, and that the Investigating Committee was holding no meetings after that night.

On March 8, 1963 I sent Mr. James Kearny a registered letter advising him of this situation and I requested that he as president of Local 10 intervene because I wanted 'The chance to clear myself and correct the mistake' before the committee that incorrectly put the label of chiseler on my name. I got no answer.

Appendix A

Shortly thereafter it was made clear that the records of the men whose job futures were to be decided by the B Committee were to be checked back to June 1959, but it was stated that 'each men will have his day in court'.

Over two months passed and I sent the following wire to William Chester and John Trupp as co-chairmen of the joint B-Labor Relations Committee:

> 'This is to avoid any possibility of a mistake. I have been informed by local union officials that your committee may still have me listed with the same LMO violations that I was charged with last February 26. Subsequent to that date it has admittedly been established that the charge was in error. I know that you cannot again take any precipitous action without checking this error. If there are other charges I request that I immediately be notified, confronted, and tried for them so that there will be no delay in my obtaining union membership and A registration along with the other B registered men who have qualified for same.'

Still I got no answer. This is very harrassing. There are rumors of other charges. Mr. Silas has stated to witnesses, Mr. R. Erkkila and others that the charges against me couldn't stand. The B Committee has held many meetings. The Investigating Committee has held meetings since March 4, 1963. Over 400 men have been passed by the committee.

page 3

I have a family to support and keep secure. One side of that security has already been damaged due to the prolonged uncertainty of my future

in the industry. I once again request union membership and A registration along with the other men who have qualified.

Very sincerely,

Stanley L. Weir 80524

CC: Harry Bridges"

The following day, June 11, 1963, I sent the following note to Mr. Paul St. Sure, President of PMA, and enclosed a copy of my letter of June 10, 1963 to Holtgrave and Kearny:

"1720 Buena Avenue
Berkeley 3, California

June 11, 1963

Mr. Paul St. Sure, President
Pacific Maritime Association
16 California Street
San Francisco, California

Dear Sir:

I am sending a copy of this letter to you at the suggestion of Paul Jacobs.

Sincerely,

Stanley L. Weir #80524"

I received neither response nor acknowledgment to any of these communications. What I did receive instead was the following unsigned letter, dated June 17, 1963, from the Longshore Labor Relations Committee of San Francisco:

"Stanley L. Weir, #80524

Dear Sir:

You are hereby notified that on the 17th day of June, 1963, at a meeting of the Joint Labor Rela-

tions Committee, you were de-registered for cause as a Class B longshoreman, pursuant to the provisions of #9 of the 'Memorandum of Rules Covering Registration and De-registration of Longshoremen in the Port of San Francisco'. Such re-registration was based upon the determination of the Committee that you have violated the applicable rules.

In the event that the Joint Labor Relations Committee receives within fifteen (15) days after the date of this letter, a detailed written statement signed by you, satisfactorily demonstrating that there is no ground for your de-registration, and requesting a hearing, you will be given a hearing, at which you may show cause, if any you have, why such de-registration should be rescinded.

Pending such a hearing, or in the event no further action is taken by you, you are and have been de-registered as a Class B longshoreman as of the 17th day of June, 1963 and are not and will not further be entitled to the rights and privileges of such Class B registration.

Very truly yours,

Joint Labor Relations Committee''

The de-registration letter of June 17, 1963, which I have just quoted has certain salient features of importance in this litigation. Although reference to those matters may break the continuity of the recital of events in this affidavit, I believe that they are of such importance as to justify the interruption.

1. The defendants have repeatedly told this Court that I and my fellow plaintiffs were de-registered pursuant to a certain set of standards purportedly enacted by the Joint Labor Relations Committee of San Francisco early in 1963. They have nowhere actually told this Court when such

standards were enacted by the Joint Port Labor Relations Committee nor have they actually set forth the purported standards themselves. What the defendants have done is to annex to the affidavit of J. A. Robertson, verified March 15, 1965, a series of exhibits. One of these documents is entitled "Summary of Standards". The standards themselves are, curiously enough, not annexed. More curious still is the fact that in a previous affidavit of J. A. Robertson (verified October 2, 1964), he sets forth in quotation, at pages 8 and 9 of his affidavit, what purports to be the standards themselves. When compared with the purported summary, however, they are identical. This may well be so, i.e., the standards and the summary of the standards are identical, but certainly it opens a veritable Pandora's Box of questions, all of which lead to my second comment.

2. Whether there were such standards, what their genuine contents might actually be and whether they were really ever enacted by the Joint Port Labor Relations Committee is immaterial because the Joint Port Labor Relations Committee made it clear that we (I and my fellow plaintiffs) were being de-registered pursuant to other standards entirely. The Committee's letter of June 17, 1963, is quite specific. It states:

> "You are hereby notified that on the 17th day of June, 1963, at a meeting of the Joint Labor Relations Committee, you were de-registered for cause as a Class B longshoreman, pursuant to the provisions of #9 of the 'Memorandum of Rules Covering Registration and Re-registration of Longshoremen in the Port of San Francisco'. Such de-registration was based upon the determination of the Committee that you have violated the applicable rules."

But Section 9 of the 1958 Memorandum is quite specific. It nowhere lists as grounds for de-registration those al-

leged standards upon which the Joint Port Labor Relations Committee purported to make its judgments of de-registration. It reads:

"Section 9. *De-registration of Limited Registration (Class B) Longshoremen.*

(a) A Class B longshoreman may be de-registered in accordance with the provisions of Section 16(f) of the Basic Longshore Agreement and, in addition, he may be de-registered for cause by the Joint Labor Relations Committee (in accordance with such rules or uniform procedures as may be established or followed by such Committee) if the Committee finds:

(i) The (sic) he has made any significant misstatement or misrepresentation in his application or interview.

(ii) That he has failed, without leave of absence or excuse, to register at the Dispatch Hall for a period of four consecutive weeks, such de-registration to be effective as of the beginning of such four week period.

(iii) That he has obtained and is engaged in other work or employment on a full time basis except with the approval or upon authorized leave of absence of the Joint Labor Relations Committee.

(iv) That over a period of three months or more he has had a poor work record as evidence by frequent failures to sign-in, flops or other facts indicating that he has not made himself available for full time dispatch through the Hall, except where he is on leave of absence for illness, disability or for other reason approved by the Joint Labor Relations Committee.

(v) That he has failed to make himself available for any work or shifts to which he may have been assigned by the Joint Labor Relations Committee.

(vi) That he is physically unable to do the work of a longshoreman, except where his disability has been incurred by industrial injury or disease occurring during the course of his employment as a longshoreman on the limited registration list.

(vii) That he fails to develop in respect to the abilities or knowledge requisite to the performance of longshore work and/or if he fails to participate in the longshore training program jointly established by the parties.

(viii) That he fails to participate where he is involved, in procedures established to provide contract compliance, or that he has violated any other contract provision for which registered longshoremen may be penalized and fails to submit to discipline or penalty regularly provided in the case of registered longshoremen.

(ix) That he has been working in a manner which endangers the safety of other longshoremen.

(x) That he failed to take a physical examination as required by the Joint Port Labor Relations Committee or failed to submit the full report thereof to the Joint Port Labor Relations Committee.

(xi) Or for any other cause; provided that neither membership or nonmembership in the union nor activity or nonactivity for or against the union, shall be a factor in considering applications for registration or in de-registration.

(b) Either party, if it shall have information indicating that a Class B longshoreman is subject to de-registration for cause, may, at a regular meeting of the Joint Labor Relations Committee propose the de-registration of such Class B longshoreman and submit to the Committee any evidence in support thereof, if after consideration of the evidence submitted, the parties jointly concur in the proposal to de-register such Class B longshoreman, he shall be de-registered as of the last day on which he worked as a longshoreman; however, notice of such action taken shall be given by ordinary mail to the person so de-registered, and upon proper application in writing, having been made to the Joint Labor Relations Committee by such person within fifteen (15) days after the mailing of such notice, said person so de-registered shall be given a hearing by said Joint Labor Relations Committee at which hearing he may submit evidence as to the facts considered by the Committee and others relevant to de-registration; in the event that the Joint Labor Relations Committee, after such hearing shall be satisfied that the person de-registered has shown that he was de-registered contrary to the rules, because of material mistake of fact or otherwise, and there was no ground for his de-registration, it may by unanimous vote rescind such de-registration; otherwise said de-registration shall be effective as of the date on which such de-registered person last worked as a longshoreman. Such notice of de-registration shall be by letter in substantially the following form:

Dear Sir:

You are hereby notified that on the ..... day of ....., 19...., at a regular meeting

of the Joint Labor Relations Committee, by unanimous vote, you were de-registered for cause as a Class B longshoreman, pursuant to the provisions of Section 9 of the 'Memorandum of Rules Governing Registration and De-registration of longshoremen in the Port of San Francisco'. Such de-registration was based upon the determination of the Committee that you have violated the applicable rules, and particularly that you have (here give particulars).

In the event that the Joint Labor Relations Committee receives within fifteen (15) days after the date of this letter, a detailed written statement signed by you, satisfactorily demonstrating that the foregoing statement of facts is erroneous and that there is no ground for your de-registration, and requesting a hearing, you will be given a hearing, at which you may show cause, if any you have, why such de-registration should be rescinded.

Pending such a hearing or in the event no further action is taken by you, you are and have been de-registered as a Class B longshoreman as of the ..... day of ....., 19 .... and are not and will not further be entitled to the rights and privileges of such Class B registration.

Very truly yours,

Joint Labor Relations Committee

By .....

By .....

(c) Limited registration (Class B) longshoremen may be de-registered if the Joint Labor Relations Committee determines the list is too long for the amount of work available. De-registration shall be

from the bottom of the list after all men who have given cause for de-registration are dropped.

Joint Port Labor Relations Committee''

3. Moreover, there is still another aspect to all of this and an extremely important one at that. Section 9 sets forth the type of model letter which the Joint Port Labor Relations Committee was required to send to any Class ''B'' longshoreman whom it had decided to de-register. The last sentence of that model letter requires that it include: ''Such de-registration was based upon the determination of the Committee that you have violated the applicable rules, and particularly that you have (here give particulars) .''

The letter I received (as did all the other plaintiffs) is absolutely silent as to the particulars of the charges involved. That this represents a very grave violation of the duty of the defendants is, I submit, obvious. That omission when taken together with the matters I have already related in this affidavit and the further facts I shall hereinafter relate give a completely Kafkaesque quality to the entire proceedings and also give to the asserted protestations of the defendants of high-minded regularity and fairness, a very questionable character if not an absolutely incredible one.

I return to my recitation of events.

On June 21, 1963, after receiving the de-registration letter of June 17, 1963, I wrote the following letter which is self-explanatory:

Appendix A

"1720 Buena Avenue
Berkeley 3, California
June 21, 1963

San Francisco Joint Port Labor Relations
Committee
Mr. R. R. Holtgrave, Secretary
c/o Pacific Martime Association
16 California Street
San Francisco, California
and
Mr. James Kearny, Chairman
San Francisco, JPLRC
c/o ILWU Local 10
40 North Point Street
San Francisco, California

Dear Sirs:

I received your letter in which you de-registered me as of June 17, 1963. It does not inform me of any offense I may allegedly have committed.

Under provisions pursuant to #9 of the Memorandum of Rules covering Registration and Deregistration I have had but one questioning of my record for which I was tried during my four years on the waterfront and I was cleared.

I request a hearing.

I request a written, detailed list of any charges you may have against me so that I can prepare for the hearing. I request that I immediately have my right to work restored so that I can support my family during this period.

Very sincerely yours,

Stanley L. Weir #80524

Copies to: Bridges, Bodine, and Thomas."

This letter finally elicited a response. It took the form of a letter dated July 5, 1963, from the Longshore Labor Relations Committee of San Francisco and reads as follows:

> "Your request for a hearing on your de-registration as A Class 'B' longshoreman has been granted. This hearing will be held before a special meeting of the Joint Longshore Labor Relations Committee on JUL 11, 1963 at 2 P.M., upstairs at Pier 24, San Francisco. Any medical evidence or other documents to support your case should be submitted to the Committee at this time.
>
> Failure to appear at the time and place indicated will disqualify you from further consideration."

On July 7, 1963, after receiving this letter, I immediately sent a telegram to Mr. R. R. Holtgrave, the Secretary of the Joint Port Labor Relations Committee of San Francisco, reading as follows:

> "DEAR SIR. RECEIVED YOUR LETTER NOTIFYING ME I AM TO HAVE HEARING JULY 11TH I WILL BE PRESENT, BUT YOU HAVE NOT YET TOLD ME THE CHARGE YOU INTEND TO TRY ME FOR I AGAIN REQUEST YOU SO INFORM ME, AND NOT FORCE ME TO APPPEAR WITHOUT PREPARATION SINCERELY"

Mr. Holtgrave's reply, likewise by telegram, requires no comment. It reads:

> "YOUR UNION IS YOUR EXCLUSIVE BARGAINING REPRESENTATIVE ON YOUR GRIEVANCE UNLESS YOU INTEND TO PROCEED INDEPENDENTLY WITH THE EMPLOYERS UNDER SECTION 9 OF THE NATIONAL LABOR RELATIONS ACT YOU SHOULD CONSULT WITH YOUR UNION REGARDING THE HEARING"

I immediately did as instructed. On July 9, 1963, I sent the following telegram to Mr. Kearny, President of Local

No. 10 and Chairman of the Joint Port Labor Relations Committee of San Francisco:

> "R R HOLTGRAVE SECRETARY YOUR COMMITTEE NOTIFIED ME MY HEARING JULY 11. I WIRED HIM REQUESTING CHARGES. HE RETURNED WIRE THAT UNLESS I WANT TO DEAL WITH HIM UNDER SECTION 9 NATIONAL LABOR RELATIONS ACT THAT MY UNION IS MY REPRESENTATIVE AND I SHOULD CONSULT MY UNION ON THE CHARGE. I REQUEST YOU WIRE ME THE SPECIFIC CHARGES SO I CAN PREPARE DEFENSE."

By this time I was not astonished that I never received either acknowledgment or response.

On July 11, 1963, I appeared as directed before the Joint Port Labor Relations Committee. The session opened with my being told, (a) that I would not be permitted to have counsel, (b) that I would not be permitted to produce witnesses on my behalf, (c) that I would not be told the exact nature of the charges against me but only the general nature of the accusations, (d) that if I wanted to ascertain the precise nature of the charges which were *now* being leveled at me, it would be necessary for me to appear *entirely unaccompanied* (and this was stressed) at the Records' Office of the Committee within one week.

At the "hearing" itself, the union representatives made no offer to represent me, they did not even ask that the Committee be specific in its charges and absolutely gave me no assistance whatsoever. The union representatives were part of the prosecution.

At the "hearing" after being told the things that I set forth above, I was invited to make any statement I wanted. I spoke from written notes and said substantially the following: That I was glad I had the opportunity to speak to the Committee, that I was aware that more detailed atten-

tion had been directed toward me than toward any other Class "B" applicant for Class "A" registration because I had been unswerving in my defense of the rights and interests of the "B" men, because they had elected me their leader and spokesman, because I had been the representative elected by the "B" men to represent them before the Executive Committee of Local No. 10, and because, I had been outspoken in opposing the collective agreement as being unfair and completely unjust to the "B" men and, in the long run, towards the entire longshore working force, both "A" and "B", as well, and that I had, in consequence, earned the enmity of the officials of both the union and PMA; that this was not the first unfounded attempt to de-register me; that in April of 1963 the Committee had sent a de-registration letter to me ostensibly on the ground of a violation of the availability rule, but they had to back down and cancel the de-registration when I fought back and established conclusively that the charge was groundless; that this was another attempt to de-register me on groundless charges, just as it was an attempt to de-register other "B" men (the other plaintiffs in this action) on groundless charges, because we had earned the enmity of the leadership of the union and the employers for opposing the short-sighted and ultimately self-defeating collective agreement; that I had also gained the hostility of the leadership of the union and the employers by protesting the 1960 freeze of promotions of "B" men to Class "A"; that other standards were being applied to me than to other applicants for promotion to "A" status; that those of the "B" men (even those who opposed the collective agreement and the freeze as unfair but were not outspoken about their objections) were checked for a base four-week period, but that those like myself who gave repeated voice to our objections were being investigated with a fine tooth comb for every day of our four years

as longshoremen; that the maximum charges against me at one time was four hours, at another it was thirteen-and-one-half hours and still again at another eight-and-one-half hours, and in each instance I had shown them to be baseless charges; that having done so, having demonstrated the charges to be groundless, I was cited again to appear before the investigating Committee but refused a hearing when I appeared; that I made repeated requests to be heard; that I was aware that the union had hired Asher Harer, the most experienced record check available to them, to go over my records with a fine tooth comb (as well as the records of some thirty other Class "B" men) and that he had given me a clean bill of health so to speak; that I was aware that a copy of Mr. Harer's report was in the possession of Mr. Kearny and that it showed that there was but one possible technical violation of this low-man-out rules against me in the entire four-year period of any "B" registration and that was but for two-ond-one-half hours; that I denied that even that two-and-one-half hours was correct and chargeable against me; that I was aware of the low-man-out rules since I was the "B" men's representative; that I was utterly opposed to chiseling of any sort and it was for that reason the "B" men elected me as their representative; that anyone who said I chiseled was a liar; and that I deserved my promotion but that if I did not get it I did not intend to quit and would fight the unjust decision to the bitter end.

During the course of my long statement to the Committee, I made reference to the report of Asher Harer, which I said was in Mr. Kearny's possession. Mr. Kearny interrupted to take out the report and read it to the Committee at that point and, indeed, it stated what I had claimed was in it. I then continued with my statement. When I finished my statement, there was a long silence. Finally, Mr. Holtgrave said, "Are you claiming discrimina-

tion by this Committee? Because if you are, the rules say that you can take an appeal within 10 days from today. Do you want to do that?" I told him that I was a bit amazed by his remark since I did not know what their decision would be and in the very beginning they had informed me that their decision would not come down for about two weeks. I concluded by saying specifically that I found their procedure baffling. I said, "How can I appeal within ten days from today from a decision which you tell me you will not reach for another two weeks?" Mr. Holtgrave did not reply but instead said that if I wanted to I could go to the records checker's office on July 17, 1963, to learn the specific details of what the charges were against me. I said to Mr. Holtgrave, "My experience is very bad with that sort of thing because the last time I went to the records checker's office I never got back to the Committee. How, if I clear myself on the 17th, will I get back here?" Mr. Holtgrave said, "The chances are that you will not, but there will be a PMA man there on the 17th and you may go there if you like." With that remark, I was told the hearing was at an end and I should leave.

I appeared at the records checker's office on July 17, 1963, and this time I was accused of 22½ hours of low-man-out violations on specific dates. I got out my own records which I had with me and tried to show them that each of the alleged violations were groundless. They refused to look at my records. I asked them to produce the sign-in sheets so that I could substantiate my statement that I was not guilty of any of the violations of which I was being accused. This, too, they refused to do. Mr. Edwards of PMA in effect said to me that they were standing on their accusations and that that was the end of the matter. The next day I wrote the following letter which is self-explanatory:

Appendix A

"1720 Buena Avenue
Berkeley 3, California
July 18, 1963

Mr. R. R. Holtgrave, Secretary
Joint Labor Relations Committee
c/o Pacific Maritime Association
16 California Street
San Francisco, California
and
Mr. James Kearny, Chairman
Joint Labor Relations Committee
c/o ILWU
400 North Point Street
San Francisco, California

Dear Sirs:

Your committee de-registered me as a Class B longshoreman on June 17, 1963 thus discharging me from my job. At that time you did not supply me with the reasons for your action.

Because I appealed, you sent me a letter dated July 5, 1963 telling me I had been granted a 'hearing' on July 11, 1963. Prior to the latter date I telegramed both of you requesting the charges I was to be tried for. I did not receive the answer I requested.

At the July 11 'hearing' I was not supplied with the specific nature of the charges. I was simply told that I had violated the LMO rules by droping 23½ hours. Neither of the two lawyers present for the PMA nor the union's four man B committee that had accused me supplied the specifics of the charges. No master sheets, sign in sheets, or (with one exception), dispatch sheets were produced to substantiate the charges.

Appendix A

When I objected I was informed by your secretary that I could learn the exact nature of the charges that I was being tried for on that day (July 11, 1963) on July 17, 1963 at the Records Office.

When I arrived at this 'closed door' confrontation at the Records Office to learn of and discuss these charges there was present Mr. Edwards of the PMA, Mr. Ritter, the records checker, Mr. Hoffman of the B committee Mr. Hunter, the sargent at arms and for part of the time looking on was Mr. Silas. I was presented with charges that now totaled 22½ hours.

Was I being tried by these men instead of your committee of authority? Did they have the power to clear me or find me innocent? I was not told that my hearing was to be continued at the records office or that any but your committee had jurisdiction.

In view of the above I request a real hearing in front of your committee.

(Again I point out that I should not be tried for more than the hours I allegedly dropped on the basis of the first four week check. The amount was less than 10 hours. The men who were given A registration and not de-registered were not checked for more than four weeks if the amount was less than 10 hours. I was checked for at least sixteen (16) weeks. I met the standards by which over four hundred men were promoted to union membership and given A status. Among those correctly promoted were men found guilty of LMO violations. Their sentence was 30 days off as the contract stipulates. I, who have never been tried, have already had over 30 days off.)

I request that all the charges be backed by all the relevant documents from the records office needed to substantiate them.

Only in such a hearing can I for the first time have the opportunity to make my defense. In addition to simple adherence to democratic procedure I add that the extreme complexity of the LMO system makes this doubly true. I seem to recall that at the July 11 'hearing' I was told I would not be allowed to produce witnesses. In the light of the fact that my four prosecutors of the union's B committee were present as were two PMA lawyers from PMA who participated and from whom your secretary received counsel in the 'hearing', am I to be denied witnesses and counsel in my behalf?

Sincerely,

Stanley L. Weir #80524"

Parenthetically, just in the event I have not yet made it clear, I hereby deny that I was guilty of any of the violations which were specifically charged against me at the records office on July 17, 1963.

The next event which occurred was that I received a letter on the stationery of the Longshore Labor Relations Committee of San Francisco, which reads as follows:

"July 23, 1963

Stanley L. Weir

Dear Sir:

This letter will advise you that the Longshore Labor Relations Committee has considered your appeal on de-registration which was heard at the meeting of July 11, 1963.

Appendix A

After a thorough investigation and review of the facts in your case, the Committee has decided that these facts are such that the application of the rules agreed to between the parties to these facts requires your deregistration. Accordingly, its decision is to reaffirm the determination made on June 17, 1963 that you are deregistered.

Very truly yours,

R. R. Holtgrave
Secretary"

On July 27, 1963, I took an appeal and in doing so wrote a letter which reads as follows:

"July 27, 1965

R. R. Holtgrave, Secretary
James Kearny, Chairman
JLRC (PMA-ILWU)
16 California Street
San Francisco, California

Dear Sirs:

Your committee de-registered me on June 17. On July 24, I received your letter denying my hearing appeal. In so doing you consummated an action that is discriminatory. You have not judged all the men involved by the same standards.

I appeal your decision and request another hearing as stipulated, where I will prove and document this discrimination.

I have never been able to get from you an official statement specifying the alleged charges against me, nor did your committee produce documents to substantiate the charges.

Would you please correct this situation for the next hearing."

Substantially, all of the other plaintiffs wrote identical letters of appeal on that date. All of the plaintiffs, including myself, waited patiently hoping that our appeals would be called for a hearing. After waiting eight-and-three quarter months without acknowledgment or response or any other action whatsoever by the defendants, the other plaintiffs and I commenced this action. Before this action was commenced, however, I tried to find out if the Committee and the defendants intended to act on the appeals and when that would be. I telephoned for information and was informed that the matter was closed. The decision of July 23, 1963, I was informed, was final. It was then that this action was actually commenced.

Before going on to discuss the evidence upon which I ask this Court to conclude that the defendants acted against me (and the other plaintiffs) with hostility, in bad faith and with open malice, I believe it apposite to bring to the attention of this Court the fact that there have been at least three separate, protracted, plenary hearings in collateral proceedings dealing with the underlying events and that *in each of those hearings the factual conclusions arrived at independently by the respective impartial hearing officers either have been sharply at variance with or totally contradictory of the arguments, assertions, conclusions and contentions of the defendants as they have been presented to this Court in this litigation.* This has been true, first, in the hearings before the California Unemployment Insurance Appeals Board where nearly 1,700 pages of testimony were elicited and scores of exhibits scrutinized in a bitterly contested proceeding and, secondly, in the protracted hearings before a Trial Examiner of the National Labor Relations Board, in a relevant allied proceeding, where again extensive testimony was heard and large numbers of documentary exhibits were considered. For the information of this Court, I hereby annex hereto, make part hereof and mark as Exhibits, photostatic copies of the following:

Appendix A

Exhibit "C"—Decision of Donald Gilson, as Referee, dated May 14, 1964, for the California Unemployment Insurance Appeals Board in proceedings entitled, "In the Matter of James V. Carter, et al.", Case No. SF-3033. I am one of the claimants in these proceedings.

Exhibit "D"—Decision of Albert E. Gatley, as Referee, dated August 16, 1963, for the California Unemployment Insurance Appeals Board in proceedings entitled, "In the Matter of Roger W. Fleeton," Case No. OAK-4519.

Exhibit "E"—Decision of the California Unemployment Insurance Appeals Board, dated February 14, 1964, in an appellate decision entitled, "Roger W. Fleeton, Claimant-Respondent, vs. Pacific Maritime Association, Employer-Appellant", Benefit Decision No. 63-3167.

Exhibit "F"—Decision of Herman Marx, as Trial Examiner, for National Labor Relations Board, dated May 4, 1965, in consolidated proceedings entitled, "Pacific Maritime Association and Johnson Lee, et al." (Case Nos. 20-CA-2787 etc.) and "International Longshoremen's and Warehousemen's Union, Local No. 10 and Johnson Lee, et al." (Case Nos. 20-CB-1121 etc.).

It would serve no useful purpose to summarize the foregoing exhibits in detail in this affidavit, but it is important, however, to point to certain salient aspects of those decisions.

First: In the proceedings before the California Unemployment Insurance Appeals Board involving as claimants many, if not most, of the plaintiffs in this action (among whom I am one) (*In the Matter of James V. Carter, et al.*, Case No. SF-3033) the decision of the Referee (Donald Gilson), dated May 14, 1964, (Exhibit "C") which was reached, as I have already observed, after considering testimony covering nearly 1,700 pages of transcript, including several hundred pages of testimony by representatives of the defendants, stated:

> "The questions presented are two in number and are mutually exclusive. First, if the claimants here-

in voluntarily left their work, did they do so without good cause? Secondly, if the within claimants were discharged by their employer, was such discharge for misconduct?" (p. 10)

It is important to observe the conclusions arrived at by the Referee with respect to these two questions. In dealing with the first he concluded:

"In order to evaluate the circumstances in the instant cases with the cited cases, it is necessary to review briefly the circumstances in which the claimants are found. They had worked since 1959 as longshoremen and, as such, were subject to the rules and regulations that have been hereinabove set forth. In this capacity they were obliged to pay a *pro rata* cost of the hiring hall, which they all did, even though at times they were late with such payments. It is worthy of comment, however, that as of the date that consideration was given to them for reclassification as Class A longshoremen, they were all in a current condition in respect to their *pro rata* payments. In each such instance the individuals had paid the $1 per day fine,* which was established for tardy pay-

* The $1.00 per day fine imposed for late payment of *pro rata* was an exaction imposed unilaterally by the union. It seems not to have been imposed pursuant to any provision of the collective bargaining agreement. It together with the *pro rata* was paid into the union treasury from which undisclosed sums were used to defray the union's portion of the cost of maintaining the hiring hall. In the decision of the Trial Examiner for the NLRB, referred to above, he found: "The San Francisco Port Committee fixed the 'pro rata share' payable by Class B Registrants, charging $8 per month since some point in March 1963, and $6 per month prior thereto. These payments are made by the registrants directly to Local 10, which levies and collects a fine of $1 for each day a B registrant is in arrears." (Recision, p. 5:1-6)

ments and in each such instance, the man continued fully eligible to be dispatched to work as a Class B longshoreman and was in fact dispatched as such over the years involved.

"Similarly, some of the claimants herein had been subjected to penalties in connection with violations of the 'low-man-out' rule. It is true that errors had occurred in respect to the hours used by some of the claimants herein. Such errors had occurred in some cases *because of a rule adopted by the dispatcher* in connection with Sundays and, in other cases, it was *because lack of knowledge and understanding of the rules and confusion in the minds of the claimants* as to the proper hours to be used. In each such instance the claimants had been continued in employment until the decisive action of the Joint Port Labor Relations Committee which is the subject matter of the instant case.

* * *

"After analyzing all the facts, *it is inherently impossible to believe that the claimants herein could logically have been expected to anticipate that their acts would result in the loss of their employment. In brief, the claimants did not embark on a course of action which they knew or should have known would result in the loss of their employment. As a matter of fact, over the years a pattern of behavior was established which was condoned and allowed by the employer, the union and the Joint Port Labor Relations Committee.*" (pages 12-13)—(Italics added.)

Even more pertinent are the conclusions of the Referee with respect to the second issue, namely, "whether or not such discharge was for misconduct." In reaching his conclusions on this issue the Referee stated that the standard which he employed in determining the issue was whether the claimants had been discharged "because of a material

breach of duty owed the employer under the contract of employment which breach tends to injure substantially the employer's interest." His conclusions read in part:

> "A careful analysis of the facts shows that during the period of the claimants' employment from 1959 to June 17, 1963, they were retained as registered Class B longshoremen and as such were dispatched to such employment as became available through the hiring facilities of the jointly operated hiring hall. During this period of employment, as has been indicated hereinabove, all the claimants became involved to a more or less extent with one or more of the stated violations of the rules adopted for their conduct. Again, emphasis must be placed upon the fact that violations in respect to the working rules or in respect to availability were considered at the time of occurrence and penalties were assessed. Those penalties being satisfied, the individuals were continued as Class B longshoremen and were dispatched to employment as it arose. *If* the Joint Port Labor Relations Committee was harmed in any way or *if* the companies for whom the services were performed through the facilities of the Joint Port Labor Relations Committee were jeopardized, *such acts against the employer's interest were condoned and abrogated* by the imposition of the penalty and the satisfaction thereof.
>
> "In connection with the violations of the *pro rata* payment and the 'low-man-out' rule, it is especially noteworthy that the principal party to be aggrieved by such violations was the International Longshore and Warehousemen's Union, inasmuch as such violations affected the financial operation of the hiring hall and also was of a nature whereby the so-called 'chiseling' of the claimants was to the detriment of the members of the union. Yet, despite these acts which would jeopardize the union organization rather than

the employer organization or the Joint Port Labor Relations Committee, the ILWU at the meeting of the Joint Port Labor Relations Committee, on July 16, 1963, moved that individuals involved in the LMO violations and *pro rata* payment violations be reregistered and moved to Class A registration. *This would indicate that the principal party which would be aggrieved by the acts of the claimants was not in fact aggrieved* and that the grievance was not of a nature which would preclude the union desiring such individuals to be promoted to the higher classification and accepted into membership.*

"When these circumstances are considered along with the fact that violations of the LMO program *would* in no way jeopardize the functions of the Joint Port Labor Relations Committee and that said Joint Port Labor Relations Committee had previously *condoned* the other violations that are involved herein, it is concluded that there is serious doubt that the acts of the claimants constitute misconduct. . . .

---

* It may well be noted that the motion referred to was made in response to two motions which were "overwhelmingly adopted" at a membership meeting of Local 10 on July 11, 1963, which read as follows:

"M/S/C THAT ALL 'B' MEN WHO ARE ON APPEAL AND WHO HAVE NOT BEEN PROMOTED SOLELY BECAUSE OF LOW-MAN OUT VIOLATIONS SHALL BE GIVEN 30 DAYS OFF AS PER CONTRACT AND PROMOTED TO 'A' REGISTRATION.

"M/S/C THAT THE LABOR RELATIONS COMMITTEE BE INSTRUCTED THAT ALL 'B' MEN WHO ARE ON APPEAL AND HAVE NOT BEEN PROMOTED SOLELY BECAUSE OF PRO-RATA VIOLATIONS SHALL BE REREGISTERED AND MOVED TO 'A' REGISTRATION." (Local 10 Longshore Bulletin, July 19, 1963.)

Two things are most significant here: the membership, who in the ultimate analysis, constitute the "aggrieved" party did not consider themselves so and, moreover, they "overwhelmingly" recognized the deregistrations of the B men to be contrary to the contract.

"... The circumstances herein are such, and the evidence serves to establish, that the claimants desired to continue working and that they had no reason to believe that violations occurring over a period of three or four years, for which proper penalty had in each instance been made, would result in the loss of their employment. *Their acts were not of a nature to be wilful or indicative of intention disregard of the interests of the Joint Port Labor Relations Committee. . . . A discharge under such circumstances is not for misconduct. . . .*" (Pages 13-14; italics added.)

Secondly, in the separate proceedings before the California Unemployment Insurance Appeals Board involving Roger W. Fleeton (Case No. OAK-4519), (Exhibit "D") one of the plaintiffs in this action, the Referee (Albert E. Gatley) concluded:

"The claimant herein was terminated from his employment by the action of a joint labor relations committee made up of members of his union* and employers. He has testified under oath he was advised by the union dispatcher that he was not required to be available for dispatch on Sunday and that it was customary of longshoremen in his category not to be available on Sundays. It was further the custom of individuals in this category not to report penalty hours in the event that they missed employment opportunities on Sundays. *The employer was unable to present any evidence that would contradict this testimony.* The claimant's alleged violations of the registration rules were committed months in advance of any action taken by his union or the Joint Relations Labor Board. Although the employer is a party to the agreement which estab-

* This is an error. The claimant was not a member of the union. The Committee was made up of representatives of PMA and Local 10.

lished the dispatch rules, the claimant's discharge was instigated by the Union and the distribution of work program was for the benefit of the union members. In the opinion of the referee *the evidence does not substantiate a finding that the claimant violated an obligation owed to the employer and further, it could not be said that the claimant's actions were wilful, so as to constitute misconduct. . . .*" (Page 3; italics added.)

PMA appealed this decision to the Board. On February 14, 1964, the Board affirmed the Referee's decision and in doing so wrote:

> "The claimant testified that he and others of the group of Class B longshoremen had been informed by a union official that it was not necessary that they registered or be available for work on Sundays because of the slight chance that Class B men would obtain Sunday employment, and that the matter would be taken up with the Pacific Maritime Association to confirm the action. The dispatchers were not charging Class B men with hours of work on Sunday but were leaving the registration sheet blank. The violation of which the claimant was accused was that he had work opportunities in April and in August 1962, on Sundays, and did not report the 'flops' or re-register the following Monday, as is required by the rules. The claimant further testified that such procedure was common practice among all of the Class B longshoremen. . . .
> "*The witness for the employer was unable to state whether this practice was a standard practice. . . .*" (Page 8; italics added.)

Appendix A

The Board, in unanimously affirming the Referee's decision, concluded:

> "... the express intention of violating the rules ... is absent in the matter presently before us. In the present case the claimant had been informed by the dispatcher, a union member, that it was unnecessary for Class B members to register and hold themselves available for work on Sundays because of the slight chance that they would be called. It appears as if it was standard practice for Class B members to absent themselves on Sundays without incurring a penalty. While the published rules are specific about the necessity of observing the rules strictly, it is our opinion that the claimant was entitled to rely on information given to him and to others in his situation, from one in authority. We hold, therefore, that the claimant did not intentionally violate the rules of the Joint Labor Relations Committee. ..." (Page 10).

Thirdly, there were extensive hearings before a Trial Examiner of the National Labor Relations Board (Exhibit "F") involving five Class B longshoremen who were deregistered together with these plaintiffs on June 17, 1963, and upon allegedly substantially identical grounds (Case Nos. 20-CA-2787; 20-CA-2788; 20-CA-2796; 20-CA-2796-2; 20-CA-2796-3; 20-CB-1121; 20-CB-1122; 20-CB-1124; 20-CB-1124-2; 20-CB-1124-3). In effect the Trial Examiner found that the alleged grounds upon which the defendants ostensibly predicated deregistration of the Class B longshoremen there involved were without substance and recommended, among other things, their reinstatement with back pay and interest. In its salient aspects that decision is extremely pertinent here. A copy of the decision is before this Court as an exhibit. Its

length precludes summarization. However, I stress its importance on this motion because of its detailed recital of the underlying facts involved, its careful analysis and evaluation as to the weight, credibility and implications of the testimony adduced and its overall conclusions. I venture the opinion that if this decision, together with the decisions rendered after the unemployment insurance compensation hearings, are placed on one side and the factual allegations of the defendants in this litigation are placed on the other, the conclusion will be inescapable that there is something less than good faith in the selfrighteous presentations and protestations of the defendants in this litigation.

I have charged that the defendants discriminated against me from motives which were malicious; that they did so with overt hostility; and that the defendant unions, with the aid and assistance of PMA denied me entirely fair representation.

These statements are, of course, in part, conclusions. To a certain extent I have already set forth the factual basis upon which these conclusions rest. I now propose to deal with certain of the facts which will "round out the picture," so to speak, and demonstrate fully the motivations involved.

I was, as those already pointed out, registered as a Class "B" longshoreman on June 1, 1959. This date is important because it comes during a period which marks the end of certain tentative negotiations which were being conducted between PMA and ILWU—negotiations which had been under way for several years and which were soon to conclude in an intermediate stage: the execution on August 30, 1959, of a certain collective agreement effective for a three (3) year period commencing retroactively on June 15, 1959, and ending on June 15, 1962, with provisions for certain further negotiations annually during the three year term. Because of the importance of this agree-

ment to the remarks which I shall hereinafter make, I annex a copy thereof as Exhibit "G". I shall discuss it more fully hereinafter, suffice it now to note that I was outspoken in my opposition to this agreement because of its immediately injurious effects on the working conditions of the Class "B" men and, over the long run, to the detriment of the Class "A" men as well. I shall return to this subject hereinafter.

The original category of registered longshoremen came into existence as a consequence of the bitter waterfront strike of 1934 on the Pacific Coast. It was terminated with a collective agreement but only after it riveted the attention of the entire nation upon it and, likewise, only after it invoked Presidential intervention. It represented one of the high points of labor militancy in this country. The settlement which came out of it provided, among other things, for the registration of the permanent longshore work force. Registration had a twofold aim: it sought to satisfy the needs of the employers by making available a stabilized labor force while simultaneously affording longshoremen regularity and continuity of employment.

During the next dozen years or so the waterfront on the Pacific Coast remained a place of troubled peace. The period was marked by a host of major strikes of almost equal bitterness and by an almost countless number of sporadic and local strikes.

The last of the major disruptive strikes occurred in 1948 and lasted for 95 days. It was following the settlement of that strike that a new spirit of accommondation gradually was achieved. Several factors combined to make that result possible. First, there was a change in the leadership of the employer group. This was a necessary condition for the purpose of better accommodation, but not a fully sufficient one. Two other conditions were far more significant: (1) There were the beginnings of mechanization applied to the loading and unloading of cargo and the

recognition that the trend toward the use of labor saving devices was not a trend capable of being stopped in its tracks. Longshore union militancy could disrupt and obtruct but it could not permanently halt the trend. The trend proved the threat of a future decreasing need of as large a longshore working force as had prevailed in the past. ILWU and the registered longshoremen were extremely cognizant of this factor and seemingly tempered their activities accordingly.

(2) From the point of view not only of ILWU and the registered longshoremen, but also from the standpoint of PMA, there was beginning to be a very discernible drop in the number of registered longshoremen, a drop in the availability in the experienced longshore labor force, which was the consequence of normal attrition in any closed category: their deaths, there were injuries and retirements, there were transfers to other occupational pursuits and other related factors at work all of which served to decrease the number of registered longshoremen regularly available.

There was yet another factor involved which was even more crucial than all of the foregoing: the average age of the registered longshoremen had and was continuing to increase. This left them less and less able to do the arduous work which—in spite of all the mechanization conceivable—still remained an absolute necessity in every large areas of longshoring.

By the mid-1950's, these factors were, not only recognized but openly discussed by all interested parties. Toward the end of 1957, conversations of an exploratory nature had begun between PMA and ILWU looking toward possible solutions for the problems these factors posed. For PMA the great aim, of course, was the elimination of all, or substantially all, of the restrictive practices which were embodied in the then existing collective agreement and which had been attained by ILWU over the years from 1934 on.

To a certain extent those restrictive practices involved what Harry Bridges termed the forced use of "witnesses:" longshoremen who were totally unnecessary for the accomplishment of the tasks involved. But, this was but a part, and perhaps not the chief part, of the restrictive practices which PMA sought to end. It sought a free hand in its operations: it wanted to be the sole judge of what was proper in its utilization of its labor force. PMA members did not as a consequence of the collective agreement which was subsequently entered in for the first time begin to mechanize. It had been doing it right along. What it wanted was to be able to determine for itself what the minimum labor it required to man its equipment and not the optimum number or the number the unions had attained as the minimum in prior collective agreements.

ILWU, for its part, faced the problem of how eventually to protect the Class "A" longshoremen who were more and more coming to an age at which they were necessarily required to retire or physically incapable of doing demanding tasks. There was recognition, too, that inevitably the restrictive work practice rules would to some extent have to be given up. For both PMA and ILWU, there was additionally the necessity of having a replacement body of longshoremen who would be available to do the more arduous work which still remained, which continues to remain in abundance and with respect to which mechanical devices are either no substitute or even useful adjunct. Such supplementary body of longshoremen were, of course, also necessary as replacements for the natural losses incurred in the closed category of registered longshoremen. Tentative feelers between the parties in the mid-1950's indicated a desire on both sides to compromise the differences between them. Certain exploratory approaches were therefore made. In 1957, the parties opened practically the entire field of longshore protective provisions for negotiation. This was done following a union caucus consisting of dele-

gates elected by locals to determine policy, which met in October of that year.

Subsequent to that union caucus, ILWU submitted a memorandum to PMA on November 19, 1957 in which ILWU proposed more formal negotiations and listed the following as mutual objectives to be explored:

> "1. To extend and broaden the scope of cargo traffic moving through West Coast ports and to revitalize the lagging volume of existing types of cargo by:
>
> (a) encouraging employers to develop new methods of operation; (b) accelerating existing processes of cargo handling; and (c) reducing cargo-handling costs in water transportation, including faster ship turn-around.
>
> "2. To preserve the presently registered force of longshoremen as the basic force of the industry and to share with that force a portion of the net labor cost saving to be effected by the introduction of mechanical innovations, removal of contractual restrictions, or any other means."

In other words, to explore the possibility of giving to members of PMA as complete freedom for the manner, mode and nature of their operations as they had practically enjoyed prior to 1934 at the expense of longshoremen not of the Class "A" category.

These negotiations had certain concrete results. One of the first and, of course, one of the most important of them so far as this litigation is concerned is the fact that on March 18, 1958, the Joint Port Labor Relations Committee in the Port of San Francisco adopted the 1958 Memorandum whose purpose, among others, was to set the machinery going for registration soon thereafter of a

large group of Class "B" longshoremen. The plaintiffs were that group of Class "B" longshoremen.

The second result was involved with our induction as Class "B" longshoremen in the middle of 1959. With our induction the groundwork was laid (a) for relieving the Class "A" men of the duty of doing taxing, difficult and back breaking work—that work was now, in practice, exclusively for the Class "B" men, who under the rules could not refuse to take such assignment—and (b) for eliminating, in practice, substantially all of the protective rules embodied in previous collective bargaining agreements because practically speaking, now the only ones injured by the elimination of such protective work rules were the "B" men with whose protests neither the leadership of the union nor the employers were concerned. The collective agreement of August 10, 1959 (Exhibit "G") followed soon thereafter.

It is of interest in this connection to note that in August of 1959, at or about the time the new agreement was entered into, PMA (with the cooperation of ILWU) hired Max D. Kossoris of the Bureau of Labor Statistics to make various studies for it. Subsequently, in January of 1961, Mr. Kossoris published an article in the Monthly Labor Review entitled "Working Rules in West Coast Longshoring" in which some very pertinent comments were made. He wrote at page 4:

> "To make some progress in the desired direction, the PMA and the ILWU entered into the remarkable agreement of 1959. For a payment of $1½ million, the union agreed to go along with any and all mechanization during the 1959-60 contract year; but all restrictive rules were to remain in full effect. The 1958 fully registered work force was to be maintained, subject only to natural attrition—i.e., deaths, retirements, and dropouts. The employers, in addi-

tion to the right to mechanize without fear of reprisal by the union, bought a year's time during which to develop a measurement system accurately determining the man-hours saved.

"This was the initial step. The ultimate objective was stated to be:

"To guarantee the fully registered work force a share in the savings effected by laborsaving machinery, changed methods of operation, or changes in working rules and contract restrictions resulting in reduced manpower or man-hours with the same or greater productivity for an operation.

"This objective went far beyond mechanization. It included—on the basis of the cited language—*any* change that resulted in greater productivity, regardless of how it was brought about. The union clearly recognized that restrictive working rules were part of that picture. The agreement also was silent on what the union was to get as its share of the savings. This was to be left to later negotiations when the measurements would indicate the size of such savings. Then the parties would know what they were bargaining about."

Mr. Kossoris acknowledged the entirely one sided nature of the 1959 agreement: its purpose was "to guarantee the fully registered work force . . ." but of benefits to the other members of the collective bargaining unit—the Class "B" men—there were none.

Mr. Kossoris tells us certain other revealing information:

"During the first bargaining session on May 17, 1960, the ILWU's negotiators were surprised to learn that the employers were no longer interested in the sharing of gains. Instead, the employers'

position was: How much will it cost us to get rid of the restrictive rules and to get a free hand in the running of our business?''

Mr. Kossoris thereafter tells us:

''Behind this shift in the employers' position was a significant and interesting change in thinking. During the preceding 2 years, the ''sharing of gains'' concept was generally accepted, although with at least one important defection. It seemed a reasonable and equitable way out of the bind of restrictive rules, and it promised far-reaching benefits. But early in 1960, the men running some of the larger steamship companies reversed their thinking. To permit the union to share in gains was considered an invasion of management's prerogatives and consequently was completely unacceptable. Management decided to ''buy out'' the restrictive practices and labor's opposition to a mechanization. The problem was the price.

''The employer and union negotiators proceeded from very different starting points. In exchange for a free hand, management offered a guaranteed wage that would protect the longshoremen against lost work opportunity. To the union, this was completely unacceptable. Conceivably, cargo might increase in volume so that no longeshoreman would lose work; and then the union would get nothing for giving up its restrictive rules. The union's position was: We'll give up our rules, for a price; but we set a high value on our rules because we think the companies will gain millions of dollars.

''Subsequent negotiations— which stretched out until the ground rules of the 1960 agreement were settled on October 18, 1960—revolved around the questions of how much and what for.''

Appendix A

All of these negotiations culminated in a series of agreements and understandings between PMA and ILWU the net practical effect of which is that for a price of $29,000,000 the employers—PMA—bought all of the protective devices which had been developed over the years since 1934 for the protection of the longshoremen with all of the benefits running to one category of the collective bargaining unit only—the Class "A" men so registered as of August 10, 1959. All of the detriments were at the cost of the remainder of the members of the collective bargaining unit—the Class "B"" men. And even to the extent that some provision remained for the protection of the "B" men in theory it became illusory in practice because the collective agreement provided that a strike in protest against various conditions by the union would serve to reduce the $29,000,000 fund at the rate of $13,650 per day. Since the then registered Class "A" men would be penalized by such action, it took from them and from the leadership of ILWU any incentive to really protect the Class "B" men from whatever conditions the employers now imposed upon them.

The foregoing represents one aspect of the background events upon which, when taken in connection with certain other facts to be set forth hereinafter, I shall ask this Court to conclude that there has been bad faith, malice and hostility toward me by both PMA and ILWU. However, there is another background phase, likewise, necessary for such understanding. I turn to that matter now.

Within a few days after our induction as Class "B" longshoremen a special meeting of all Class "B" men was called. Attendance was compulsory. We were addressed by officers of Local No. 10 who first informed us that we were to be governed by the 1958 Memorandum and the Low-Man-Out Rules and, secondly, they represented to us that within six months to one year all of us would be moved into Class "A" status. Mr. Chester, the Interna-

tional Representative to Local No. 10, in his address dealing with this subject represented to us that this was a firm understanding and that we could count on it.

At first it seemed that that understanding was to be kept. Early in 1960 some 163 Class "B" men were approved for transfer to Class "A" and we were informed that the resolution pursuant to which this was to be done provided for further transfers at the rate of not less than 15 Class "B" men per month thereafter to make up for the natural attrition in the Class "A" category. Before any transfers were made, however, the 1960 contract negotiations came along and all Class "B" men were frozen, including the 163 Class "B" men who had already been approved.

These two factors: The detrimental effect on the "B" category and the freeze on promotions led to much discontent among the entire "B" group. I was, perhaps, the "B" man most outspoken in my condemnation and disapproval although the feeling was quite general throughout the "B" ranks. The dissent continued to grow. The consequence was that Local No. 10 invited the Class "B" men to elect three of their ranks as representatives to the Local No. 10's Executive Board. They hoped that thereby some of the considerable discontent might be abated. I, being one of the most outspoken of the "B" men, was elected one of the three representatives to the Executive Board.

We actually attended but few sessions of the Executive Board. At the very first session we attended Thomas Silas and Carl Smith moved to exclude us except for those items on the agenda dealing specifically with "B" men. The next session we were again met with hostility and abuse and again Carl Smith and Thomas Silas attempted to have us excluded. In the third and last session we attended we fared no better. William Chester moved to exclude us and this was done.

Appendix A

During that period it was made clear to us and especially by Thomas Silas that our opposition to the agreement and our opposition to the freeze on the "B" men's status had made of us and our following among the "B" men *persona non grata* to the leadership of the union and to the employers. Silas bluntly told us that we as representatives of the "B" men were being watched continuously and that we would be deregistered at the first opportunity that presented itself. That his threat was well founded was shortly thereafter confirmed when the other two Class "B" representatives were deregistered. I alone survived and at one time I was even told by Albert Bertani, an official of Local No. 10, that, "If they don't get you one way, they will another." I was, in short, a marked man and to a lesser extent were those who supported me most strongly among whom are most of the plaintiffs.

Among other typical incidents I can relate which bear upon my allegation of hostility, malice and bad faith is one which is quite clear. In the autumn of 1961 Harvey Swados published an article in Dissent entitled "The West Coast Waterfront". That article in the main argued the objections I had frequently maintained in opposition to the contract and the exploitation of the "B" men. I had two copies of the article and from time to time I lent one of them to various longshoremen to read. (For the information of this Court of photostatic copy of that article is hereto annexed, made part hereof and marked Exhibit "H"). Subsequently, in the office of James Kearny and in the presence of Albert Bertani, Pat Tobin, a close friend of Harry Bridges, said to me that I could expect to be a victim sooner or later because I hadn't acted wisely. I said to him, "What have I done to bring on Harry Bridges' wrath?" He told me that I had been observed lending copies of the article to Class "B" men. I said, "Isn't it my right to do that if I please?" He replied, "Yes, but it wasn't smart to do it." Then he repeated,

"if you had been smart you certainly wouldn't have done it." Later on in the conversation he also said, in substance, that I had not been wise in being too outspoken in opposition to the contract and implied that I would pay a price for it.

I respectfully submit that I have shown that my charges of bad faith, malice and hostility are predicated upon a sound factual showing. I have demonstrated among other things that my position of leadership and opposition among the "B" men earned me the animosity of both the leadership of the union and PMA because both had equal stakes in the agreement and its discriminating features directed against the "B" men. Most of the plaintiffs were my firm supporters and they too thereby became the victims of hostility, malice and bad faith. All of us have been victimized because we antagonized the existing bureaucrats of ILWU, Local No. 10 and PMA, although in Local No. 10 there were some officials who were men of integrity and who told me they hated to be part of the frame up against me but that they were powerless to interfere. All of the plaintiffs have just cause for complaint in this litigation.

There is an additional matter that I desire to mention in this affidavit: the hostile discrimination as it manifested itself in disparity of treatment. This took on a variety of forms. Perhaps the most immediately important one is involved with the fact that during the processing of the "B" men for transfer to the "A" status prior to our deregistration on June 17, 1963, we were not judged by equal standards: invidious discrimination was involved. However, the evidence of this is in the possession of the defendants, and although I know the evidence exists, and where it is to be found, I shall not be able to do so until the trial of this action, because its disclosure awaits the employment of discovery, inspection and deposition proceedings.

There are, however, two aspects of disparity of treatment that I can point to immediately.

Appendix A

(1) J. A. Robertson, Secretary of PMA, in his affidavit submitted to this Court, verified October 2, 1964, stated that among the rules adopted was the following:

> "1. Any class 'B' longshoreman found to have 10 or more hours of Low Man Out violations shall be considered ineligible for advancement to Class 'A' registration."

and, therefore, was required to be deregistered (p. 8).

I quote the following from the Local No. 10 Longshore Bulletin and I submit that comment is unnecessary:

"*LOW-MAN-OUT VIOLATORS* (Night Hold)

Name	*Brass*	
John E. Thompson	#75130	dropped 55½ hours in four (4) weeks Penalty—30 Days Off
Josephus Moore	#66218	dropped 77½ hours in four (4) weeks Penalty—30 Days Off
Leo Breda	#77849	dropped 55¾ hours in four (4) weeks—2nd offense Penalty—Six (6) Months Off
Langford Boyd	# 8984	dropped 46 hours in four (4) weeks Penalty—30 Days Off
Charlie W. Phillips,	#69843	dropped 50 hours in four (4) weeks—2nd offense Penalty—Six (6) Months Off"

Another typical entry from the Local No. 10 Longshore Bulletin:

> "LABOR RELATIONS COMMITTEE—At Labor Relations Committee meeting of Tuesday, June 18th, L.

Wilderson #6546, day winch, was given 30 days off for low man out violations in the Hiring Hall. He dropped 22½ hours in four weeks.

"At the Labor Relations Committee meeting of Tuesday, June 25, 1963—Curtis Hill #67428, night winch board, was found guilty of dropping 34½ hours in 6 weeks. Second offense and 6 months off."

Mr. Robertson next informed this Court that a second such rule provided that deregistration would necessarily follow for any "B" man who had "been late in the payment of his pro-rata eight or more times." The defendants have not tired of repeating how serious an offense this ostensibly is.

Without further comment, therefore, I annex hereto as exhibits five bulletins published at various times by Local No. 10, (Exhibits "I-1", "I-2", "I-3", "I-4" and "I-5"). I invite this Court's comparison.

Wherefore, I respectfully pray that this Court deny the several motions of the defendants in all respects.

Stanley L. Weir

Subscribed and sworn to before me this 11th day of August, 1965.

(SEAL)

GRACE G. HACKETT,
Notary Public in and for the City and County of San Francisco, State of California.
My Commission expires February 9, 1967.

APPENDIX B

IRVING A. THAU
ATTORNEY AT LAW

55 LIBERTY STREET
NEW YORK 5, N. Y.

BArclay 7-5494
Hotel Mark Hopkins
San Francisco, Calif.
August 17, 1965

Hon. George B. Harris
Judge, United States District Court
450 Golden Gate Avenue
San Francisco, California

Re: Williams et al. v. Pacific Maritime Association et al., No. 42284

My dear Judge Harris:

I take the liberty of addressing this letter to you, first, because certain information came into my possession last evening following the close of argument before you, respecting the existence of the allegedly enacted "standards" and, secondly, because during the argument, you expressed particular interest in that aspect of my remarks.

I make certain brief comments in order to place this new information in its setting.

(1) The defendants have repeatedly stated that there were certain "standards" duly and solemnly enacted by the Joint Labor Relations Committee of the Port of San Francisco, pursuant to which they claim the plaintiffs were deregistered.

(2) The Fourth Amended Complaint was, in part, predicated on the defendants' repeated assertion of the existence of such secretly enacted "standards."

(3) The Memorandum of Law which I submitted in opposition to the motions of the defendants consequently assumed the existence of such standards, although it argued their invalidity predicated on Steel v. Louisville & Nashville Railway Co., 323 U.S. 192.

(4) Mr. J. A. Robertson, Secretary of Pacific Maritime Association, made and submitted an affidavit to this Court, verified October 2, 1964, in which he swore to the truth of the following:

> "The committee adopted a set of standards that it would apply in evaluating each of the limited (Class 'B') longshoremen who sought advancement to Class 'A' status. They relate to such matters as employer complaints, drunkenness on the job, pilferage, 'chiseling' on the honor system used in dispatching men to work, etc. They state:
>
> > '1. Any Class "B" longshoremen found to have 10 or more hours of Low Man out violations shall be considered ineligible for advancement to Class "A" registration.
> >
> > 2. Any Class "B" longshoreman found to have been late in the payment of his pro-rata eight or more times (or six or more times with an otherwise blemished record) shall be considered ineligible for advancement to Class "A" registration.
> >
> > 3. Any Class "B" longshoreman found to have failed to meet the 70% availability requirement for any 30-day period, subject to 5 below, shall be considered ineligible for advancement to Class "A" registration.

4. Any Class "B" longshoreman who has been the subject of one or more employer complaints for intoxication or pilferage that the Joint Port Committee has sustained shall be considered ineligible for advancement to Class "A" registration.

5. The standards shall be applied uniformly and no exceptions shall be made, except that one 30-day period of fully explained failure of 70% availability shall be excused.' "

(5) A variety of factors, nevertheless, combined not only to arouse but to deepen suspicion of the very grave possibility that perhaps such "standards" never, in fact, existed. In the affidavit of Stanley L. Weir, verified August 11, 1965, submitted in opposition to these motions, it was suggested:

"The defendants have repeatedly told this Court that I and my fellow plaintiffs were de-registered pursuant to a certain set of standards purportedly enacted by the Joint Labor Relations Committee of San Francisco early in 1963. They have nowhere actually told this Court when such standards were enacted by the Joint Port Labor Relations Committee nor have they actually set forth the purported standards themselves. What the defendants have done is to annex to the affidavit of J. A. Robertson, verified March 15, 1965, a series of exhibits. One of these documents is entitled 'Summary of Standards'. The standards themselves are, curiously enough, not annexed. More curious still is the fact that in a previous affidavit of J. A. Robertson (verified October 2, 1964), he sets forth in quotation, at pages 8 and 9 of his affidavit, what purports to be the standards themselves. When compared with the purported

summary, however, they are identical. This may well be so, i.e., the standards and the summary of the standards are identical, but certainly it opens a veritable Pandora's Box of questions, * * * "

(6) Yesterday, following the close of argument on these motions, there came to my attention the testimony of Mr. John Trupp, the Pacific Maritime Association representative on the Joint Labor Relations Committee of the Port of San Francisco, taken before the California Unemployment Insurance Appeals Board on March 30, 1964 (26th session). The importance of that testimony is such that I take the liberty of annexing photostatic copies of five pages from Mr. Trupp's cross-examination for this Court's attention.

I respectfully submit that predicated on this cross-examination my suspicions are more than merely soundly based—they are virtually confirmed. May I therefore ask, parenthetically, from what document was it that Mr. J. A. Robertson was quoting in his affidavit of October 2, 1964? Or is there no such document?

I trust, Your Honor will forgive the intrusion of this letter submitted without leave. I beg in justification the importance of the matter.

May I respectfully request that this letter be filed as part of the proceedings on these motions?

Thank you for your kindness, patience and consideration.

Respectfully yours,

/s/ IRVING A. THAU
Irving A. Thau

IAT:S

CC—Richard Ernst, Esq.

CC—Gladstein, Andersen, Leonard & Sibbett, Esqs.

Appendix B

Cross Examination of Mr. Trupp

Q. (Gordon): Now, Mr. Trupp, would you find for me the minutes of the meeting where the rules which were used for the claimants represented by me, were adopted and signed by the Joint Port Labor Relations Committee?
A. (Trupp): There are a number of documents which contain the rules, Mr. Gordon.

Q. Well, I'm asking you if those rules were adopted at the meeting of the Joint Port Labor Relations Committee in 1963?

Munter: Your Honor, please—it causes a problem when Mr. Gordon insists on interrupting witnesses in the middle of their answer if it doesn't come out in just the manner that he desires. And I think that in behalf of these witnesses he should be instructed to let the witness answer the question, and if a further following answer is indicated or a new question can be posed, or anything in his answer is non-responsive, he can so request the referee to instruct him to answer further. But I do think—in fairness and in the interests of parliamentary procedure, that the witness should be permitted to complete his response without interruption.

Referee: I observed no deficiency in the manner in which this is being conducted. However—I have heard your comments. Mr. Gordon, will you proceed?

Munter: Very well. All right, Your Honor, I'm going to, for the witness, insist that our witnesses be given an opportunity to answer questions without interruption.

Referee: You may insist. I will insist on the same thing, Mr. Munter.

Munter: All right.

Referee: And I think the answer was complete.

Munter: All right, I would just request then—and I think you overlooked it—to have this last question, the partial answer, and the interruption, read back so that you can observe what I feel is a wilful interruption of the witness' answers before he has had a chance to complete them.

Referee: We will pay clear attention from here on, Mr. Munter.

(Reporter reads back.)

Q. (Gordon): All right, I'm going to rephrase my question: Were those rules which were used to deregister the claimants represented by me adopted and published by the Joint Port Labor Relations Committee in a regular proceeding in 1963 which forms part of the minutes of the meetings which are contained in this book called "Labor Relations Committee Minutes, April 2, 1963 through 9-24-1963"?

Munter: I must object to the question on the grounds that it is compound—

Referee: I could follow it very clearly, Mr. Munter, and I understood every phase of it. And I think it is answerable. Therefore, the objection is overruled. Will you answer, Mr. Trupp, please?

A. (Trupp): The local Longshore Labor Relations Committee did not originate those rules. They were given to the local committee as instructions from the Coast Committee.

Q. (Gordon): All right. So there are no written rules by the Joint Port Labor Relations Committee on the point?

A. No, there are not.

Q. All right, sir. A. Not in a single set of minutes form.

Q. All right. Well—all right. Do they exist in other memoranda signed by both of the parties who are members of the Joint Port Labor Relations Committee? A. I'm sure, in sum and substance that they are covered in various documents.

Q. Are they covered as statements of cause, publication of which, in turn, as to hours and past delinquencies, numbers of times late, have been posted any where on the bulletin boards—or furnished the union, rather—by the Joint Port Labor Relations Committee? A. (Pause) You'll have to straighten that question out for me. (Smiles)

Q. All right. You say, in sum and substance, these rules, so-called, which were never explicitly adopted and appear in minute form, are reflected in various records of the Joint Port Labor Relations Committee. And my question to you is: Has this even been posted, or furnished by the Joint Port Labor Relations Committee to be posted, as an explicit statement by that committee that violation of ten hours on the low-man-out rule is cause for deregistration; that, we'll say, eight times past delinquency is cause for deregistration; and, in regard to the other matters as to which deregistration was effected? A. All those things contained in one single document—I don't believe so.

Q. All right. And your statement, I take it, then, is that the only explicit formulation was accomplished during an April meeting of the Joint Coast Labor Relations Committee?

Munter: I submit, Your Honor, that that is a grossly distorted summation of the witness' testimony.

Gordon: All right.

Munter: —If you don't mind making an objection, Mr. Gordon.

Referee: Now, you have an objection?

Gordon: I've made an objection.

Referee: Yes—and I'm going to overrule it, because I think Mr. Trupp can answer or not. If he doesn't understand, he will say so. He has done so, before.

Munter: My objection was that it was a grossly distorted summary, not that it was incomprehensible.

Gordon: And on that basis, I have the right to summarize and I have the right to lead him.

Munter: You don't have the right to make an inaccurate summation.

Referee: The objection is overruled.

Q. (Gordon): Do you recall the question, Mr. Trupp? A. (Trupp): I would like to have it asked again.

Q. All right, sir. My question is this: Are the essential statements which formed cause for deregistration of those claimants represented by me, stated by the Joint Coast Labor Relations Committee as of its meeting you testified to in 1963? A. These matters were discussed orally—yes.

Q. All right. Is that the only essential proceeding that did take place, the oral discussion? A. To the best of my knowledge.

Q. All right. I call your attention to section 22.1 of the Pacific Coast Longshore Agreement. It states:

> "No provision or term of this Agreement may be amended, modified, changed altered or waived except by a written document executed by the parties hereto."

And I ask you if you know whether this oral discussion was ever reduced to writing, signed by the members of the Joint Coast Labor Relations Committee? A. (Pause) I don't know.

Appendix B

Q. All right. I'll ask you once again if the so-called instruction is embodied in any rule that is contained in the minutes of that Joint Coast Labor Relations Committee? A. Are you asking me if all the specific rules which were utilized during the months of April, May—

Q. I'm asking— A. —during the months of April, May, June, are specifically written out in minute form and documented within this book? The answer is: No.

Q. All right, sir. No further questions.

APPENDIX C

Fourth Amended Complaint

(DECLARATORY AND INJUNCTIVE RELIF; DAMAGES)

IRVING A. THAU
55 Liberty Street
New York, New York 10005

FRANCIS HEISLER
P. O. Drawer 3996
Carmel, California

ARTHUR BRUNWASSER
1255 Post Street, Suite 1002
San Francisco 9, California
Telephone: PRospect 1-4400

Attorneys for Plaintiffs
Named in Preamble Paragraph

Appendix C

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action File No. 42284

GEORGE R. WILLIAMS, WILLIAM JONES, PAUL MAY, EATHAN GUMS, JR., EDGAR J. DUNLAP, WALTER L. ROBINSON, FRANK NEREU, LOUIS T. LACY, LEROY J. PROVOST, ROGER W. FLEETON, ROBERT E. BIRKS, ANTHONY MELVIN, JR., OLIVER GEETER, ANTONIO S. CAFETEIRO, EDWARD REED, WILLIAM T. CARROLL, ALBERT W. ROBERTS, PERCY FOUNTAIN, JOHN J. THYSTRUP, JR., DONALD L. NAU, WILLIAM J. HURST, JR., WILLIE C. MERRITT, MACK HEBERT, MANUEL NEUREU, JR., ARTHUR G. WINTERS, FRANK GIANNINO, STANLEY L. WEIR, FRED BAYES, WILLIE J. WHITEHEAD, RHODY ADAMS, MARIO V. LUPPI, ARTHUR L. HUGHES, CHRIS E. E. MAKAHA, JEREMIA RICHARDS, CLEO LOVE, LOUIS J. RICHARDSON, CHARLES J. JOHNSON, REGINALD W. SAUNDERS, WILLIE JENKINS, JR., WILLIE D. PALMER, CONWAY T. HUDSON, JOHN T. LEGGETT, ALFRED STRAUGHTER, THOMAS NISBY, TIMOTHY E. CARTER, JAMES U. CARTER, MELVIN KENNEDY, HENRY IMPERIAL, JAMES LANGFORD, JOHNNY J. CHERRY, ELLIS E. GRAVES, JAMES GREEN, ULYSSES HAWKINS, THEODORE TOLLIVER, LAWRENCE JOHNSON, and HERMAN CRAWFORD,

Plaintiffs,

vs.

PACIFIC MARITIME ASSOCIATION, a non-profit Corporation:

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a voluntary unincorporated Association;

LOCAL 10 of INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a voluntary unincorporated Association;

HARRY BRIDGES, HOWARD BODINE, L. B. THOMAS, WILLIAM CHESTER, ROBERT ROHATCH, THOMAS SILAS, CHARLES HOFFMAN, JOSEPH PEREZ, ALBERT JAMES, RICHARD HARP, and JAMES KEARNEY, as individuals,

Defendants.

Appendix C

Plaintiffs George R. Williams, William Jones, Paul May, Eathen Gums, Jr., Edgar L. Dunlay, Walter L. Robinson, Frank Nereu, Louis T. Lacy, Leroy J. Provost, Roger W. Fleeton, Robert E. Birks, Anthony Melvin, Jr., Oliver Geeter, Antonio S. Cafeteriro, Edward Reed, Albert W. Roberts, Percy Fountain, Donald L. Nau, William J. Hurst, Jr., Willie C. Merritt, Mack Hebert, Manuel Neurea, Jr., Arthur G. Winters, Frank Giannino, Stanley L. Weir, Fred Bayes, Willie J. Whitehead, Rhody Adams, Mario V. Luppi, Arthur L. Hughes, Jeremia Richards, Cleo Love, Louis J. Richardson, Charles J. Johnson, Reginald Saunders, Willie Jenkins, Jr., Willie D. Palmer, Conway T. Hudson, John T. Leggett, Alfred L. Straughter, Thomas Nisby, Timothy E. Carter, James U. Carter, Melvin Kennedy, James Langford, Johnny J. Cherry, Ellis E. Graves, James Green, Ulysses Hawkins, Theodore Telliver, Herman Crawford, allege:

* * *

AS AND FOR A FIRST CAUSE OF ACTION:

1. That the jurisdiction of this Court is conferred by Section 301(a) of the Labor Management Relations Act (29 U.S.C., Section 185).

2. That at all of the times hereinafter mentioned the defendant, Pacific Maritime Association (P.M.A.), was and still is a non-profit corporation organized and existing under and by virtue of the Laws of the State of California and maintains its principal office for the transaction of business in the City of San Francisco.

3. That at all of the times hereinafter mentioned P.M.A. was and still is composed of a membership which includes all or substantially all of the major steamship, stevedoring and terminal operating employers located on the Pacific

Coast of Continental United States and, more specifically with respect to this action, in the Port of San Francisco.

4. That at all of the times hereinafter mentioned P.M.A. had and still has as its principal purpose, function and activity the negotiating and administering of labor contracts with collective bargaining representatives of its employer-members and included among such collective bargaining representatives are the defendants, International Longshoremen's and Warehousemen's Union (I.L.W.U.) and its affiliated local union, International Longshoremen's and Warehousemen's Union, Local No. 10 (Local No. 10).

5. That at all of the times hereinafter mentioned I.L.W.U. was and still is a labor organization composed of chartered affiliated local unions and maintains its principal office for the transaction of business in the City of San Francisco.

6. That at all the times hereinafter mentioned Local No. 10 was and still is a labor organization, a chartered local union affiliate of I.L.W.U. confining its membership, activity and functions to the Port of San Francisco and maintains its principal office for the transaction of business in said city.

7. That at all of the times hereinafter mentioned I.L.W.U. was and still is the certified collective bargaining representative exercising statutory rights as representative (29 U.S.C., Section 159) for all employees performing work for employer-members of P.M.A. on the Pacific Coast of Continental United States and, more specifically with respect to this action, in the Port of San Francisco which involve the loading and unloading of vessels and operations incidental thereto, as well as, those involving warehousing

and operations incidental thereto with certain exceptions not here material.

8. That at all of the times hereinafter mentioned I.L.W.U. and Local No. 10 were and still are the exclusive collective bargaining representatives exercising statutory rights (29 U.S.C. Section 159) as representatives for all employees performing work for employer-members of P.M.A. in the Port of San Francisco which involve the loading and unloading of vessels and operations incidental thereto, as well as, those involving warehousing and operations incidental thereto with certain exceptions not here material.

9. That at all of the times hereinafter mentioned P.M.A. has represented its employer-members in collective bargaining negotiations with I.L.W.U. and Local No. 10 and has entered into and signed a successive series of collective agreements and amendments and modifications thereof and rules relating thereto with I.L.W.U. and Local No. 10.

10. That there is now in effect a collective agreement between P.M.A. and I.L.W.U. the term of which commenced as of June 16, 1961 and which terminates on July 1, 1966.

11. That at the time P.M.A. and I.L.W.U. entered into and signed the aforesaid collective agreement there existed in effect certain rules governing registration and deregistration of longshoremen in the Port of San Francisco which rules were adopted on or about the 18th day of March, 1958.

12. That the aforesaid rules continued in full force and effect under the collective agreement aforesaid until

the adoption shortly prior to June 17, 1963 of certain new rules governing registration and deregistration of longshoremen in the Port of San Francisco. That a true copy of the rules adopted on or about March 18, 1958 is hereto annexed, made part hereof and marked Exhibit A.

13. That at all of the times herein mentioned I.L.W.U. and Local No. 10 as exclusive collective bargaining representatives exercising statutory rights owed a fiduciary duty to all longshore employees working under the aforesaid collective agreement, including these plaintiffs, to represent them fairly, without arbitrary or hostile purpose, action or intent and a further duty of giving to all longshore employees, including these plaintiffs, an opportunity to know of and to be heard concerning any and all proposed collective agreements and all changes, amendments and modifications thereof and of all rules purportedly adopted pursuant thereto and of all proposed or contemplated changes, amendments and modifications thereof.

14. That at all of the material times herein mentioned the aforesaid collective agreement and the rules adopted pursuant thereto (Exhibit A) regulated the terms and conditions of employment of all longshoremen employed in the Port of San Francisco and said collective agreement likewise provided for the joint operation of a hiring hall for the dispatching of longshoremen to do available work in the Port of San Francisco.

15. That at all of the times material herein the aforesaid collective agreement and the rules adopted pursuant thereto (Exhibit A) provided for a category of fully registered longshoremen (Class A) who had priority to all available work and who were entitled to become members of Local No. 10 and for a second category of limited registered longshoremen (Class B) who had but limited

rights to available work and who were not entitled to membership in Local No. 10. That the aforesaid rules also provided for standards of performance for Class B longshoremen, penalties for infractions, standards and procedures for promoting Class B longshoremen to Class A and for their possible deregistration.

16. That up to the 17th day of June, 1963, all of the plaintiffs were Class B longshoremen employed by member-employers of P.M.A. in the Port of San Francisco and governed by the aforesaid collective agreement negotiated by the I.L.W.U. and Local No. 10 as exclusive collective bargaining representatives with P.M.A., and to the best of the knowledge, information and belief of the plaintiffs and each of them, by the rules aforesaid (Exhibit A) adopted pursuant to the said collective agreement.

17. That as of June 17, 1963 all of the plaintiffs had worked and had been regularly available for work as Class B longshoremen in the Port of San Francisco for a period of approximately four years.

18. That for approximately four years prior to June 17, 1963 each of the plaintiffs had earned his livelihood by pursuing his occupation of longshoremen in the Port of San Francisco.

19. That during the month of June, 1963, and particularly up to June 17, 1963, all of the plaintiffs were registered as Class B longshoremen, were in good standing, were guilty of no current infractions, had corrected all past violations of rules, were entitled to assignment for available work and were, in fact, regularly assigned to work by the jointly operated hiring hall.

20. That on or about the 17th day of June, 1963, the defendants jointly decided on the promotion of some 400

Class B longshoremen to the Class A category and at the same time decided on the deregistration of all other existing Class B longshoremen including the plaintiffs who were thereupon notified of their immediate and summary deregistration.

21. That the aforesaid decision was purportedly made pursuant to an alleged new set of rules adopted by the defendants jointly a few weeks prior to the summary notification of the plaintiffs of the defendants' decision to deregister them; that the plaintiffs were at no time notified or otherwise informed that changes in the rules were being considered; that the plaintiffs were at no time notified or otherwise informed that the adoption of new rules was being contemplated; that the plaintiffs were never given an opportunity to present their point of view, position or interest during or preceding the negotiations leading up to or at the time of the adoption of the new rules; that the plaintiffs were never informed when the new rules were adopted; that the plaintiffs were never given notice of the new rules or a copy thereof prior to being informed of the decision to deregister them.

22. That the new rules were arbitrary and not reasonably relevant to the determination of which Class B longshoremen should be promoted to the Class A category.

23. That the new rules were wholly irrelevant and capricious in determining who should be deregistered and who would thereby be deprived of all future opportunity for employment as longshoremen in the Port of San Francisco.

23. That the rules were arbitrary and unfair as amended in that the determination to promote some Class B longshoremen and to deregister others was based on a

retroactive application of alleged violations thereby severely, arbitrarily and capriciously penalizing conduct which was not grounds either for denying promotion to Class A or for deregistration at the time the alleged acts were committed. That conduct which was ground only for a nominal monetary fine, or a reprimand, or for minor disciplinary penalty was retroactively made ground not only for denying promotion to Class A but for total deregistration. That all of this was contrary to the rules which had existed at the time of the alleged acts and for a long time thereafter.

24. That the plaintiffs have exhausted all appeals provided under the collective agreement; that their appeals have been rejected and they have been denied promotion to Class A and have been totally deregistered by a final decision made by the Joint Coast Labor Relations Committee on November 20, 1964, which Committee is the highest appeal body available to the plaintiffs for appeal of their grievance.

25. That the defendants' decision to deregister the plaintiffs was not rationally related to the longshore labor requirements of the Port of San Francisco as those labor requirements in fact existed or as they were known and believed by the defendants to exist.

26. That at or about the time the plaintiffs were deregistered the defendants undertook to and did register new men, not theretofore employed as longshoremen as Class B longshoremen and did furnish such newly registered Class B longshoremen employment on a regular and continuing basis.

27. That at all times since the plaintiffs were deregistered as Class B longshoremen each of them has been

ready, willing and able to engage in the occupation of longshoremen and has been available for employment as such.

28. That but for the violation by I.L.W.U. and Local No. 10 of their duty as exclusive bargaining representatives and the conduct of the other defendants as herein described, each of the plaintiffs would have been a fully registered Class A longshoreman and a member of Local No. 10 from on or about June 17, 1963 and would have secured regular employment as a fully registered longshoreman.

29. That since on or about the 17th day of June, 1963 as a result of the violation by I.L.W.U. and Local No. 10 of their duty as exclusive collective bargaining representative of the plaintiffs, and the conduct of the other defendants, the plaintiffs have been prevented from and have been unable to secure employment as longshoremen in the Port of San Francisco and, unless given relief by this Court, will be permanently barred from pursuing their occupations as longshoremen.

30. That the I.L.W.U. and Local No. 10 by their negotiation of the amended rules which were substantively arbitrary, which were adopted without any opportunity on the part of those affected to be heard and which were applied retroactively to destroy the employment of the plaintiffs have violated their fiduciary obligations to the plaintiffs to represent them fairly and has arbitrarily denied them their employment as longshoremen with the employer-members of P.M.A.

31. That P.M.A. by joining with I.L.W.U. and Local No. 10 in the negotiation and adoption of the new amended

rules has participated in the denial of the plaintiffs' rights to fair representation.

32. That the plaintiffs have no adequate remedy at law.

33. That each of the plaintiffs has been damaged to the date hereof at least in the sum of $10,000 representing loss of earnings resulting from the aforesaid unlawful conduct of the defendants, such loss of earnings still continue.

AS AND FOR A SECOND CAUSE OF ACTION

34. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" to "12" inclusive, "17" to "20" inclusive, "24" to "29" inclusive and "32" with the same force and effect as though herein set forth at length.

35. That at all of the material times herein mentioned the aforesaid collective agreement and the rules adopted pursuant thereto regulated the terms and conditions of employment of all longshoremen employed in the Port of San Francisco and said collective agreement likewise provided for the joint operation of a hiring hall for the dispatching of longshoremen to do available work in the Port of San Francisco.

36. That at all of the times material herein the aforesaid collective agreement and the rules adopted pursuant thereto provided for a category of fully registered longshoremen (Class A) who had priority to all available work and who were entitled to become members of Local No. 10 and for a second category of limited registered longshoremen (Class B) who had but limited rights to available

work and who were not entitled to membership in Local No. 10. That the aforesaid rules also provided for standards of performance for Class B longshoremen, penalties for infractions, standards and procedures for promoting Class B longshoremen to Class A and for their possible deregistration.

37. That up to the 17th day of June, 1963, all of the plaintiffs were Class B longshoremen employed by member-employers of P.M.A. in the Port of San Francisco and governed by the aforesaid collective agreement negotiated by the I.L.W.U. and Local No. 10 as exclusive collective bargaining representatives with P.M.A.

38. That the amended provisions of the collective agreement establishing new rules governing promotion to Class A and for deregistration were arbitrarily applied against the plaintiffs in that other Class B longshoremen who had failed to meet the new standards were not deregistered but were promoted to Class A. The amended rules were not applied equally and fairly but with hostile discrimination against the plaintiffs.

39. That the I.L.W.U. and Local No. 10 by their agreement to unequal application of the newly amended rules failed to represent fairly the plaintiffs and caused or agreed to their denial both of promotion and their deregistration and thereby deprived the plaintiffs permanently of their opportunity for employment in the Port of San Francisco as longshoremen.

40. That P.M.A. by joining with I.L.W.U. and Local No. 10 in the unfair and unequal application of the newly amended rules participated in the denial of the plaintiffs' rights to fair representation in the administration of the collective agreement.

41. That each of the plaintiffs has been damaged to the date hereof at least in the sum of $10,000 representing loss of earnings resulting from the aforesaid unlawful conduct of the defendants and that such loss of earnings still continues.

AS AND FOR A THIRD CAUSE OF ACTION:

42. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" to "10" inclusive, "17" to "20" inclusive, "24" to "27" inclusive, "31" and "32" with the same force and effect as though herein set forth at length.

43. That at all of the material times herein mentioned the aforesaid collective agreement and the rules adopted pursuant thereto regulated the terms and conditions of employment of all longshoremen employed in the Port of San Francisco and said collective agreement likewise provided for the joint operation of a hiring hall for the dispatching of longshoremen to do available work in the Port of San Francisco.

44. That at all of the times material herein the aforesaid collective agreement and the rules adopted pursuant thereto provided for a category of fully registered longshoremen (Class A) who had priority to all available work and who were entitled to become members of Local No. 10 and for a second category of limited registered longshoremen (Class B) who had but limited rights to available work and who were not entitled to membership in Local No. 10. That the aforesaid rules also provided for standards of performance for Class B longshoremen, penalties for infractions, standards and procedures for promoting Class B longshoremen to Class A and for their possible deregistration.

45. That up to the 17th day of June, 1963, all of the plaintiffs were Class B longshoremen employed by member-employers of P.M.A. in the Port of San Francisco and governed by the aforesaid collective agreement negotiated by the I.L.W.U. and Local No. 10 as exclusive collective bargaining representatives with P.M.A.

46. That the denial to the plaintiffs of promotion to Class A and their deregistration was in violation of the clear terms of the collective agreement.

47. That the violation of the clear terms of the collective agreement as aforesaid violated the plaintiffs' individual rights under the collective agreement to continued employment as Class B longshoremen and their promotion to Class A in accordance with the terms and provisions of the then existing collective agreement.

48. That but for the wrongful conduct of the defendants as heretofore alleged, each of the plaintiffs would have been a fully registered Class A longshoreman and a member of Local No. 10 from on or about June 17, 1963 and would have secured regular employment as a fully registered longshoreman.

49. That by reason of the wrongful conduct of the defendants as heretofore alleged, the plaintiffs have been prevented from and have been unable to secure employment as longshoremen in the Port of San Francisco and, unless given relief by this Court, will be permanently barred from pursuing their occupations as longshoremen.

50. That by reason of the foregoing each of the plaintiffs has been damaged to the date hereof in execess of $10,000, representing loss of earnings resulting from the aforesaid unlawful conduct of the defendants, and that such loss of earnings still continues.

Appendix C

AS AND FOR A FOURTH CAUSE OF ACTION:

51. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" to "31" inclusive with the same force and effect as though herein set forth at length.

52. That the individual defendants above named are officers or executive officials of the defendant labor organizations.

53. That the said individual defendants did on and before the 17th day of June, 1963 conspire with each other and with the other named defendants to cause the defendants, P.M.A., I.L.W.U. and Local No. 10 to pursue the wrongful and unlawful course of conduct complained of herein; that in so doing the defendants and each of them were actuated by malice and pursued a course of conduct which was deliberately, intentionally and wilfully designed and intended to deprive the plaintiffs and each of them of their status as registered longshoremen and of their rights and privileges as such and thereby preventing them from pursuing their normal occupation and earning their livelihood thereat.

54. That by reason of the foregoing each of the plaintiffs demands punitive damages against the defendants in the amount of $100,000.00.

AS AND FOR A FIFTH CAUSE OF ACTION:

55. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" to "12" inclusive, "17" to "20" inclusive, "24" to "29" inclusive, "32" and "35" to "42" inclusive with the same force and effect as though herein set forth at length.

56. That the individual defendants above named are officers or executive officials of the defendant labor organizations.

57. That the said individual defendants did on and before the 17th day of June, 1963 conspire with each other and with the other named defendants to cause the defendants, P.M.A., I.L.W.U. and Local No. 10 to pursue the wrongful and unlawful course of conduct complained of herein; that in so doing the defendants and each of them were actuated by malice and pursued a course of conduct which was deliberately, intentionally and wilfully designed and intended to deprive the plaintiffs and each of them of their status as registered longshoremen and of their rights and privileges as such and thereby preventing them from pursuing their normal occupation and earning their livelihood thereat.

58. That by reason of the foregoing each of the plaintiffs demands punitive damages against the defendants in the amount of $100,000.00.

WHEREFORE, Plaintiffs demand judgment against the defendants as follows:

1. Declaring the legal rights, duties and obligations of the respective parties and the invalidity of the purported amended rules pursuant to which the defendants made their alleged orders deregistering the plaintiffs;

2. Enjoining the defendants pendente lite and permanently from continuing in force and effect the amended rules relating to deregistration of Class B longshoremen and doing so as of the date the same were purportedly adopted by the defendants;

3. Enjoining the defendants pendente lite and permanently from taking any steps or doing any acts which,

directly or indirectly, by design or otherwise, have the effect of implementing the said amended rules relating to deregistration of Class B longshoremen and declaring that any and all acts and decisions purportedly done or made pursuant thereto are null and void including the purported deregistration of these plaintiffs as Class B longshoremen on June 17, 1963;

4. Directing the defendants to reinstate the plaintiffs as Class B longshoremen immediately but as of June 17, 1963;

5. Directing the defendants to register the plaintiffs as Class A longshoremen immediately but as of June 17, 1963;

6. Enjoining the defendants pendente lite and permanently from in any manner whatsoever interfering with the future employment of the plaintiff as longshoremen in the Port of San Francisco;

7. Directing the defendants to make available immediately to the plaintiffs all facilities, rights and privileges of the jointly operated hiring hall on the same terms and conditions as applied to all other registered longshoremen in the Port of San Francisco;

8. Enjoining the I.L.W.U. and Local No. 10 from purporting to act as collective bargaining representatives of the plaintiffs so long as the unlawful conduct complained of herein continues;

9. Awarding each of the plaintiffs damages for loss of earnings since the 17th day of June, 1963 in such amount as may be established by them on the trial hereof;

10. Awarding each of the plaintiffs punitive damages against the defendants in the amount of $100,000.00;

11. Awarding to the plaintiffs the costs and disbursements of this action; and

Appendix C

12. Granting to the plaintiffs such other and further relief as to the Court may seem just and proper in the premises.

Dated: May 17, 1965

IRVING A. THAU
FRANCIS HEISLER
ARTHUR BRUNWASSER

By Irving A. Thau
IRVING A. THAU
Attorneys for Plaintiffs
named in Preamble Paragraph